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The 1985 Congressional hearing focused on amending Title VII of the 1964 Civil Rights Act to outlaw discrimination against handicapped persons and employment discrimination against persons with a history of cancer. Statements are presented from agency officials, policy analysts, medical staff, attorneys, and public officials. In addition, prepared statements, letters, and supplemental materials are included from advocacy groups, representatives, police officers, and national organizations such as One Fourth/the Alliance for Cancer Patients and their Families, Candlelighters, American Cancer Society, and National Federation of the Blind. (CL)

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EMPLOYMENT DISCRIMINATION AGAINST CANCER VICTIMS AND THE HANDICAPPED

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HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 370

TO AMEND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 TO MAKE DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS AN UNLAWFUL PRACTICE

AND

H.R. 1294

TO AMEND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 TO PROHIBIT EMPLOYMENT DISCRIMINATION ON THE BASIS OF A CANCER HISTORY

HEARING HELD IN WASHINGTON, DC, ON JUNE 6, 1985

Serial No. 99-11

Printed for the use of the Committee on Education and Labor

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EMPLOYMENT DISCRIMINATION AGAINST CANCER VICTIMS AND THE HANDICAPPED

THURSDAY, JUNE 6, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittee met, pursuant to call, at 9:40 a.m., in room 2261, Rayburn House Office Building, Hon. Matthew G. Martinez (chairman of the subcommittee) presiding.

Members present: Representative Martinez, Atkins, Gunderson, and Henry.

Also present: Representative Biaggi and Senator Kennedy.

Staff present: Tim Minor, staff director; Eric P. Jensen, deputy staff director; Paul Cano, legislative assistant, and Genevieve Galbreath, chief clerk/staff assistant; Dr. Beth Buehlmann, Republican staff director for education; Mary Gardner, Republican legislative associate.

[Text of H.R. 370 and H.R. 1294 follow:]

[H.R. 370, 99th Cong., 1st Sess.]

A BILL To amend title VII of the Civil Rights Act of 1964 to make discrimination against handicapped individuals an unlawful employment practice

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a reference in section 2, 3, 4, 5, or 6 of this Act of a section or other provision is a reference to a section or other provision of the Civil Rights Act of 1964.

SEC. 2. Section 701 is amended by adding at the end thereof the following:

(l)(1) The term 'handicap' means the status of any individual—

"(A) who has a physical or mental impairment which substantially limits any of such individual's major life activities;

"(B) who has a record of such an impairment; or

"(C) who is regarded as having such an impairment.

"(2) Such term does not include the status of an individual who is an alcoholic or a drug abuser—

"(A) whose current use of alcohol or drugs prevents such individual from performing the job involved; or

"(B) whose employment, because of such current use of alcohol or drugs, would constitute a direct threat to property or safety of other individuals.".

SEC. 3. (a) Sections 703(a)(1), 703(a)(2), 703(b), 703(c)(1), 703(c)(2), 703(d), and 703(e)(1) are each amended by striking out "or national origin" each place it appears and inserting in lieu thereof "national origin, or handicap."

(b) The sentence beginning "Notwithstanding any" in section 703(h) is amended—

(1) by striking out "or national origin" the first place it appears and inserting in lieu thereof "national origin, or handicap"; and

(2) by striking out "sec or national origin" and inserting in lieu thereof "sex, national origin, or handicap."

(c) Section 703(j) is amended—

(1) by striking out "or national origin" the first place it appears and inserting in lieu thereof "national origin, or handicap";

(2) by inserting after "national origin" the second place it appears the following: ", or persons with any handicap,"; and

(3) by inserting after "national origin" the third place it appears the following: ", or persons with such handicap,".

(d) The center heading of section 703 is amended by striking out "OR NATIONAL ORIGIN" and inserting in lieu thereof "NATIONAL ORIGIN, OR HANDICAP".

SEC. 4. Section 704(b) is amended by striking out "or national origin" each place it appears and inserting in lieu thereof "national origin, or handicap".

SEC. 5. The sentence beginning "No order of the court" in section 706(g) is amended by striking out "or national origin" and inserting in lieu thereof "national origin, or handicap".

SEC. 6. (a) Section 717(a) is amended by striking out "or national origin" and inserting in lieu thereof "national origin, or handicap".

(b) Section 717(c) is amended by striking out "sex or national origin" and inserting in lieu thereof "sex, national origin, or handicap".

SEC. 7. The amendments made by this Act do not affect any right, remedy, obligation, or responsibility under the Rehabilitation Act of 1973.

SEC. 8. This Act and the amendments made by this Act shall take effect at the beginning of the sixth month after the month in which this act is enacted.

[H.R. 1294, 99th Cong., 1st Sess.]

A BILL To amend title VII of the Civil Rights Act of 1964 to prohibit employment discrimination on the basis of a cancer history

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cancer Patients Employment Rights Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) more than 800,000 individuals in the United States are diagnosed annually as having cancer, and of this number approximately 400,000 will be cured;

(2) as both the number of individuals in the United States who are diagnosed as having cancer and the percentage who are cured increases, the number of living individuals with a cancer history increases to the extent that the American Cancer Society estimates that 5,000,000 people in the United States have a cancer history with approximately 3,000,000 with a history of 5 or more years since diagnosis; and

(3) approximately 25 percent of all individuals with a cancer history are victims of cancer-related employment discrimination, including job denial, wage reduction, exclusion from and reduction in benefits, dismissal, and promotion denial.

(b) PURPOSES.—The purpose of this Act is to—

(1) discourage employment discrimination against an individual based on such individual's cancer history;

(2) encourage employers to make reasonable accommodations which assist the employment of an individual with a cancer history;

(3) increase public recognition of the employability of individuals having a cancer history; and

(4) encourage further legislation designed to prohibit discrimination against individuals with cancer histories in areas other than employment discrimination.

SEC. 3. AMENDMENTS TO TITLE VII OF CIVIL RIGHTS ACT OF 1964.

(a) DEFINITION OF CANCER HISTORY.—Section 701 of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end thereof the following new subsection:

"(l) The term 'cancer history' means the status of any individual who has, or has had cancer, or who is diagnosed as having, or having had cancer. For the purposes of this subsection the term 'cancer' means any disease characterized by uncontrolled growth and spread of abnormal cells.".

(b) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—Section 704 of title VII of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection—

"(c)(1) It shall be an unlawful employment practice for an employer, employment agency, or labor organization to—

"(A) require, as a condition of employment, an employee or prospective employee with a cancer history to meet medical standards which are unrelated to job requirements, or to require such employee or prospective employee to submit to a medical examination or reveal any medical information unless such examination or information is necessary to reveal qualifications essential to job performance; or

"(B) reveal any confidential medical information concerning such an employee or prospective employee without the express written consent of such employee or prospective employee.

"(2) It shall be an unlawful employment practice for a labor organization to require a member or potential member with a cancer history to submit to a medical examination or reveal any medical information relating to cancer history without the express written consent of such member or potential member unless such examination or information is necessary to reveal qualifications essential to membership in such labor organization.

"(3) It shall be an unlawful employment practice for an employer to fail to make a good faith effort to explore whether reasonable accommodations may be made for an employee or prospective employee with a cancer history which would enable the employee or prospective employee to fulfill the job requirements. Whether an accommodation is reasonable shall be determined according to the facts and circumstances of the particular case. Factors relevant to the determination of reasonableness include administrative costs, cost of the physical accommodations, the cost of disruption of existing work practices, the size of the employer's business, and the safety of existing and potential employees.

"(4) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire, or to discharge or classify, an employee or prospective employee with a cancer history if—

"(A) the employer demonstrates that such employer is unable to reasonably accommodate an employee or prospective employee to enable such employee or prospective employee to fulfill the job requirements without undue hardship to the employer; or

"(B) the employee or prospective employee is unable to perform the job requirements in a manner which would not endanger the safety of such employee, prospective employee, or others, regardless of the availability of reasonable accommodations.".

(c) PROVISIONS OF TITLE VII OF CIVIL RIGHTS ACT OF 1964 EXTENDED TO INDIVIDUALS WITH CANCER HISTORY.—(1) Sections 703(a)(1), 703(a)(2), 703(b), 703(c)(1), 703(c)(2), 703(d), and 703(e)(1) of title VII of the Civil Rights Act of 1964 are each amended by striking out "or national origin" each place it appears and inserting in lieu thereof "national origin, or cancer history".

(2) The sentence beginning "Notwithstanding any" in section 703(h) of such title is amended—

(A) by striking out "or national origin" the first place it appears and inserting in lieu thereof "national origin, or cancer history"; and

(B) by striking out "sex or national origin" and inserting in lieu thereof "sex, national origin, or cancer history".

(3) Section 703(j) of such title is amended—

(A) by striking out "or national origin" the first place it appears and inserting in lieu thereof "national origin, or cancer history";

(B) by inserting after "national origin" the second place it appears the following: ", or persons with any cancer history,"; and

(C) by inserting after "national origin" the third place it appears the following: ", or persons with such cancer history,".

(4) Section 704(b) of such title is amended by striking out "or national origin" each place it appears and inserting in lieu thereof "national origin, or cancer history".

(5) The sentence beginning "No order of the court" in section 706(g) of such title is amended by striking out "or national origin" and inserting in lieu thereof "national origin, or cancer history".

(6) Section 717(a) of such title is amended by striking out "or national origin" and inserting in lieu thereof "national origin, or cancer history".

(7) Section 717(c) of such title is amended by striking out "sex or national origin" and inserting in lieu thereof "sex, national origin, or cancer history".

(8) The center heading of section 703 of such title is amended by striking out "OR NATIONAL ORIGIN" and inserting in lieu thereof "NATIONAL ORIGIN, OR CANCER HISTORY".

SEC. 4. EFFECT OF AMENDMENTS MADE BY THIS ACT ON THE REHABILITATION ACT OF 1973.

The amendments made by this Act do not affect any right, remedy, obligation, or responsibility under the Rehabilitation Act of 1973.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect at the beginning of the sixth month after the month in which this Act is enacted.

Mr. MARTINEZ. This meeting will come to order.

This is a meeting of the Subcommittee on Employment Opportunities. The purpose of this hearing today is to receive testimony on two bills concerned with discrimination against cancer victims and handicapped persons.

With us today are members of the committee, Chester Atkins and Mario Biaggi.

We should all be concerned with discrimination of any kind, but discrimination against cancer victims and the handicapped is especially cruel considering these people are already suffering one tragedy.

Today the committee will look at two bills to amend title VII of the Civil Rights Act of 1964, a law prohibiting employment discrimination. Title VII currently prohibits employees of more than 15 workers from discriminating against employees or applicants on the basis of race, color, religion, sex, or national origin.

Congressman Biaggi's bill, H.R. 1294, will prohibit employment discrimination against previous cancer patients.

We will also look at H.R. 370, a bill introduced by Congressman Moakley, to prohibit employment discrimination against all handicapped persons.

A recent estimate finds that there are 22 million physically disabled individuals in the United States, yet only 800,000 of these people are employed. Sixty-six percent of those who are blind, 58 percent of those who are paraplegics, and between 75 and 85 percent of those persons with epilepsy are unemployed.

The American Cancer Society estimates that 5 million people in the United States today have cancer or a history of cancer. Out of 5 million patients treated, 3 million have passed the 5-year mark of their diagnosis without relapse, which medical authorities consider as clinically cured.

Yet, ignorance on the part of employers about a handicapped person's or previous cancer patient's ability to perform in a job, results in discrimination against these individuals. The American Cancer Society estimates that approximately 90 percent of cancer patient-returnees seeking employment encounter discrimination. Not only do these statistics represent a tremendous waste of human resources and perpetuates stereotypes against handicapped individuals and cancer victims, but it clearly creates a drain on government resources and productive resources of our economy.

At this time, would any members of the subcommittee like to make a statement?

[The prepared statement of Hon. Matthew G. Martinez follows:]

PREPARED STATEMENT OF HON. MATTHEW G. MARTINEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

On Thursday, June 6, the Employment Opportunities Subcommittee will hold a hearing on H.R. 1294 and H.R. 370, both bills to amend Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment. H.R. 1294, introduced by Representative Mario Biaggi (D–NY), prohibits discrimination on the basis of a history of cancer, while H.R. 370, introduced by Representative Joe Moakley (D–Mass), prohibits discrimination against any handicapped persons.

ISSUE

A recent estimate finds that there are twenty-two million physically disabled individuals in the United States, yet only 800,000 of these people are employed. Sixty-six percent of the blind persons, fifty-three percent of the paraplegics, and between seventy-five and eighty-five percent of those persons with epilepsy are unemployed. Not only do these statistics represent a tremendous waste of human resources and perpetuate stereotypes against handicapped individuals, but it clearly creates a drain on government resources and on the productive resources of our economy.

The American Cancer Society estimates that five million people in the United States today have cancer or a history of cancer. This is a sixty-six percent increase from five years ago. Several factors contribute to this increase, including a greater incidence of curable cancers and the discovery of more successful treatments. More cancer patients are surviving today than previously. Of the five million patients treated, three million have passed the five-year mark of their diagnosis without relapse, which medical authorities consider clinically cured for cancer.

Yet ignorance on the part of employers and a lack of trust in a handicapped person's or previous cancer patient's ability to perform, result in discrimination against these individuals. The American Cancer Society estimates that approximately ninety percent of cancer patient-returnees seeking employment encounter discrimination. Unfortunately, the employer may have as many misconceptions as to the nature of the job as he or she has about the applicant's qualifications, without full evaluation of how the two may be accommodated.

Mr. BIAGGI. I do, Mr. Chairman.

Mr. MARTINEZ. We are honored to have with us today the Honorable Mario Biaggi, a member of the Education and Labor Committee, who will join the subcommittee for today's hearing. Congressman Biaggi will now make a statement.

Mr. BIAGGI. Thank you, Mr. Chairman, I want to thank you especially for allowing me to be a part of this subcommittee as we consider my bill, H.R. 1294, which amends title VII of the Civil Rights Act to outlaw employment-based discrimination against persons with a cancer history.

I have a longer prepared statement which I would like submitted for the record, but I do wish to make several brief points at this point.

Mr. MARTINEZ. With no objection, so ordered.

[The prepared statement of Hon. Mario Biaggi follows:]

PREPARED STATEMENT OF THE HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I deeply appreciate the oppportunity that you afford me today to testify on behalf of my bill, H.R. 1294, the "Cancer Patients Employment Rights Act of 1985." It is a measure which I am proud to note that you and 49 other House members have cosponsored.

Yet, this Subcommittee is really providing a special opportunity to more than 5 million Americans who are represented here today—Americans with a cancer history. For these people, having won the battle against cancer is not enough—they now face another battle far too many lose—employment discrimination.

This issue is addressed in my legislation, H.R. 1294. My bill would amend Title VII of the Civil Rights Act of 1964 to prohibit employment-based discrimination against a person on the basis of a cancer history. Legislation to outlaw employment-based discrimination is long overdue. It is time to pass a federal law to eliminate

this obvious and grievous violation of civil and human rights. Cancer survivors are entitled to equal protection under the law which is the mandate of Title VII.

It is growing increasingly difficult for the United States to overlook the cancer survivor. Thanks to extraordinary breakthroughs in medical research, one out of every two persons presently diagnosed with cancer are cured. But an even more dramatic number is that doctors estimate that 66 million Americans—one out of every four—will eventually develop cancer. The need for this legislation is clear.

Our attention today is focused on the very real problem of employment-based discrimination against those with a cancer history. An estimated one million Americans have already encountered this terrible injustice. What comprises this discrimination—What does it involve?

It can and does include many overt and subtle forms ranging from job denial to wage reduction, exclusion from and reduction in benefits, promotion denial, and even outright dismissal. A study conducted by Dr. Frances Feldman, a professor of social work at the University of Southern California, found that more than half of cancer patients in white-collar jobs and 84% of those in blue collar occupations suffered some kind of discrimination when they returned to work, if they had work to return to. Of the 84% blue-collar jobholders, 43% were fired or denied promotions by their former employers, even though doctors stated they were well enough to work. Among white-collar employees, 8% were fired, and another 19% were denied promotions or forced off the company health plan.

Victims of childhood cancer also have problems with their careers. Many schools won't accept anyone with a cancer history, although they may have been perfectly healthy for years. A childhood leukemia patient, of which 65% grow up to lead perfectly normal lives, and Hodgkin's Disease victims, a disease which disproportionately strikes a number of young people, don't even stand a chance.

The United States military (Army, Navy, Air Force, Coast Guard, Reserves, and service academies) automatically reject people with a cancer history for active duty positions. Chapter Two, Sections 2–40 and 2–41 of Army Regulation 40–501 states, "Causes for rejection for appointment, enlistment, and induction in the United States Military include benign and malignant tumors."

I feel the most dramatic way to present this issue is by citing some examples.

JAMES KOOPMAN—PRIVATE SECTOR

Mr. Koopman was dismissed from his position as President of the Phoenix Forging Company after being diagnosed as having pancreatic cancer. Doctors have pronounced him fit to work and he has expressed his strong desire to do so. James Koopman has not been re-employed by the Phoenix Forging Company nor has he been successful in obtaining employment elsewhere.

BARBARA SERVISS—PUBLIC SECTOR

Ms. Serviss was denied employment as a New York City Police Officer because of her history of Hodgkin's Disease. Ms. Serviss is 24 years old and was treated for Hodgkin's Disease at the age of 18. She has received no treatments since that time and has been disease free for almost 6 years. Barbara Serviss received a score of better than 90% on the New York City Police Department written test and passed the agility test with no problems. Her case is still pending before the New York State Division of Human Rights.

BERNARD MACK—PUBLIC SECTOR

Mr. Mack was denied entry in the United States Coast Guard Reserves because of "history of cancerous tumor." At the time he applied to join, Mr. Mack had been disease and treatment free for almost two years. He never even had chemotherapy. He is currently employed with the Philadelphia Fire Department and has practically given up all hope of joining the Coast Guard Reserves.

LIBBY—PRIVATE SECTOR—SHE WISHES TO REMAIN ANONYMOUS FOR FEAR HER JOB WOULD BE PLACED IN JEOPARDY

Libby was fired from a major Philadelphia Institution. Echoing the wishes of her doctor, she asked to work part-time till fully recovered but her request was denied. She asked to work a four-day week and a friend with similar skills would work the fifth day but her request was denied. She went back to work full-time, and then found her job, without her knowledge, being advertised in the paper. A new woman was hired but Libby was asked to stay on and train the new employee. She agreed but the new person quit. Libby's employer posted her job on the in-house bulletin

board but no one sought the position. Libby was finally "rehired." She was forced to start with no seniority and no paid sick days for three months. She is still employed and has yet to use any sick leave she has since accrued.

This represent a mere snapshot of the problem we are dealing with and hoping to rectify by the passage of H.R. 1294.

Who are these people we are dealing with? According to a major study of workers with cancer histories, these workers have proven they are responsible, hardworking, and productive employees. Between 1957 and 1971, the Metropolitan Life Insurance Company tracked 74 of its own employees with a cancer history, or employees who developed cancer while working with the company. They found:

(1) The turnover rate among employees with a cancer history was no higher than the rate for people not having cancer.

(2) No employee in the cancer group was discharged for absenteeism or poor performance.

(3) Only 3% of the cancer employees were ever placed on disability status.

Mr. Chairman, at this time I would like to include in the record documented evidence showing the important need for H.R. 1294. The following are specific causes of discrimination. They involve childhood cancer victims, middle-aged employees, and older cancer survivors. These cases have occurred in the public and private sector. Many of these people have sought legal recourse. However, there is a variance among existing state laws, and even the absence of such laws in some cases. These people have no protection because they have no federal law.

PHILIP PYNN—PUBLIC SECTOR

Leukemia developed while employed with the town of DeWitt, New York—Highway Department.

Fired from position as heavy equipment operator although he recovered and was pronounced fully fit to work by his doctor.

Mr. Pynn has filed a complaint with the New York State Division of Human Rights alleging unlawful discrimination—fired because of cancer history.

VANCE HIGH—PUBLIC SECTOR

Recovered Hodgkin's Disease patient. He applied as a Peace Corps Volunteer under the Action Vista Program 5½ years after last treatment.

Denied opportunity for Peace Corps Service and informed he was "medically disqualified" because of history of Hodgkin's Disease.

TONY RUSCA—PRIVATE SECTOR

Dismissed from position at Los Angeles Herald Examiner, an affiliate of the Hearst Corporation.

In 1981, Mr. Rusca took an authorized leave of absence because he was placed on test drugs. Cancer halted and he returned to work. Radiation treatments scheduled so as not to interfere with his work schedule.

In August 1983, he took an authorized leave of absence without pay for more treatments.

In May 1984, was informed he had been fired in January and his medical insurance no longer applied. Unaware of his dismissal, he accumulated astronomical medical bills.

Mr. Rusca is still unemployed. He has been battling cancer 13 of his 29 years.

GARY WELLS—PUBLIC SECTOR

Demoted and then forced into disability retirement from a company he wishes to have remain anonymous because he still receives some payments from them.

Contracted Hodgkin's Disease in April 1984. Began chemotherapy treatments on Fridays after work so as not to interfere with his job.

Two months later, he was demoted from Vice President of Company to Division Manager.

In January 1985, he was forced to retire early on disability or would be fired. Neither his doctor nor Mr. Wells consider him disabled.

FRANCES WRIGHT—PRIVATE SECTOR

Forced into retirement or would be fired from her job as a retail manager at Virginia Specialty Stores, Inc., a large and half-size women's clothing store.

Contracted cancer of the colon in December 1982. Returned to work as soon as her doctor permitted and took her therapy on weekends to avoid excessive absenteeism.

After 10 years of employment, was informed she would be immediately retired. If she would not accept the terms, she would be fired.

Applied for Social Security Disability benefits but was not eligible because her doctor did not consider her disabled.

Can not receive Social Security benefits until the age of 62 or 65. She is only 54. She is currently seeking new employment with no success.

MR. K—PRIVATE SECTOR—WISHES TO REMAIN ANONYMOUS AND HAVE ORGANIZATIONS REMAIN ANONYMOUS BECAUSE HE IS RELYING ON THESE PLACES FOR REFERENCES

Dismissed from job as a Development Professional (Fundraiser) with a nonprofit organization.

Sought re-employment with former employer, a major private university. He had given them 5 record fundraising campaigns. After learning of his recent bout with cancer, he was informed he would be denied the position.

He has been looking for work for five years.

He began a new position this week. Supervisor knows of his medical history but top executives do not. He was informed that if the executives were to find out, he would be denied health insurance by the company, if he was even permitted to keep the job.

I have received phone calls and letters from many other people around the country regarding employment-based discrimination against persons with a cancer history. For time considerations, I will conclude these specific examples but would like to include in the record various letters I have received from these people. Their letters tell of the heart wrenching problems faced by cancer survivors and are perfect examples of the need for this vital legislation.

These cases all point to the same dramatic conclusion—There is a critical need for a federal law to protect all cancer survivors from employment-based discrimination. H.R. 1294, to amend Title VII of the Civil Rights Act of 1964, would ensure cancer survivors equal opportunity in our nation's workplace and eliminate this travesty of injustice. Under H.R. 1294, it would be an unlawful practice for an employer, agency, or labor organization to:

Require as a condition for employment persons with a cancer history to meet medical standards which are unrelated to job requirements.

Reveal any confidential medical information without the express written consent of such employee.

Require such employees to submit to any medical examination unless necessary to reveal qualifications essential to job performance.

Fail to make a good faith effort to explore whether reasonable accommodations may be made for an employee or prospective employee with a cancer history to enable such a person to fulfill job requirements. Factors relevant to the determination of reasonable accommodations include administrative costs, cost of the physical accommodations, the cost of disruption of existing work practices, the size of the employer's business, and the safety of existing and potential employees.

Under this legislation, the term "cancer history" is defined as the status of any individual who has, or has had cancer, or who is diagnosed as having, or having had cancer. The term "cancer" means any disease characterized by uncontrolled growth and spread of abnormal cells.

Because there is no federal law to protect all employees against discrimination based on cancer history, many of these cancer survivors attempt to turn to state laws during the course of legal advocacy. However, only two states specifically protect workers with a cancer history (California and Vermont), and only one other state—New Jersey—has considered expanding their current law to include people with a cancer history. As a result, these people find their civil rights violated and no effective means of legal recourse.

The Rehabilitation Act of 1973 is designed to increase and expand employment opportunities for handicapped individuals in the public and private sector. Since its enactment, there has been much controversy regarding coverage of people with a cancer history as defined in the Rehabilitation Act. Unfortunately, this issue has not been addressed by the federal courts. However, under the definitions of the Rehabilitation Act, this much has become alarmingly evident:

(1) Most people with a cancer history do not have a physical or mental impairment which substantially limits their major life activities.

(2) Cancer itself is not defined as a handicap. It may result in a disability severe enough to be covered by the Act (Disability which requires multiple services over an

extended period of time), but this definition offers protection only to the very few cancer survivors left with a disability which requires such services over a lengthy period of time.

(3) Although the Rehabilitation Act recognizes misconceptions employers associate with cancer victims, it appears that, once again, a cancer survivor must have suffered at some time from an important substantially limiting major life activities. Because most cancer patients are able to perform their jobs without interruptions, regardless of radiation treatment, chemotherapy treatment, etc., they may not be covered under this Act.

Because of the inadequacy of the Rehabilitation Act of 1973, the inadequacy of existing state laws, and even more importantly, the absence of such laws and protection for many private sector employees, there is a real need for H.R. 1294. This bill will provide unarguable protection to all people with a cancer history. The purpose of this bill are to:

(1) Discourage employment discrimination against an individual based on such individual's cancer history.

(2) Encourage employers to make reasonable accommodations which assist the employment of an individual with a cancer history.

(3) Increase public recognition of the employability of individuals having a cancer history.

We must end employment-based discrimination against persons with a cancer history. We are a nation which prides itself on affording equal opportunities for all its citizens. This must include the million of Americans in this nation with a cancer history. The number of cancer survivors in our nation will only grow in the future. This means we will have millions of new victims of discrimination. This is unless we act now to outlaw present and future discrimination. Cancer survivors have won their big battle. Let us ensure it is a total victory by enacting H.R. 1294.

Mr. BIAGGI. First, Mr. Chairman, let me commend you not only for scheduling this hearing in such an expeditious fashion but also for joining me as a cosponsor of my bill. I am here today to do more than advocate on behalf of a piece of legislation—I really come to appeal for a constituency, a rather unique, large, and ever-growing constituency. I refer to the estimated 5 million Americans in our Nation today with a history of cancer. These are men, women, and children who have fought and won perhaps the biggest battle of their lives—the fight against cancer. They won this battle.

They were aided by several factors ranging from research, medical assistance, and treatment, and their own determination in some instances. Yet, far too many of them—in fact, as many as 1 million—have found themselves thrust into a battle. This time against employment-based discrimination. This time they do not find much help to help them beyond their own determination.

The laws that do exist on the State level are not of much assistance. The absence of a Federal law dedicated to ending discrimination makes too many cancer survivors vulnerable to losing this second battle.

It is both timely and appropriate that we raised this issue. This committee has just completed favorable consideration of H.R. 700, reaffirming our support for our major Federal Civil Rights statutes. In the case of cancer survivors, we must make sure that our Civil Rights statutes provide them adequate and appropriate protection in the workplace. Denial of employment opportunity based on cancer history is just as unlawful and unjust as denial of opportunity based on age, race, sex, or handicap.

We reveal our cruelest side as a society when we allow discrimination of this kind against cancer survivors. Unless we are prepared to take legislative steps to combat it we simply sanction its continuation.

The employment discrimination we speak of can and does take many overt and subtle forms. It ranges from outright job denial to wage reduction, exclusion from, and reduction in benefits, promotional denial, and even dismissal.

A study conducted by Dr. Frances Feldman of the University of Southern California, show that 84 percent of blue-collar and more than 50 percent of white-collar job holders with cancer suffered some kind of discrimination when they returned to work, if they had work to return to. Of the 84 percent of blue-collar workers, 43 percent were fired or denied promotions by their former employers even though doctors stated they were well enough to work.

I have a number of cases I present in my longer statement but let me mention one.

Mr. James Koopman was dismissed from his position as President of the Phoenix Forging Co. after being diagnosed as having pancreatic cancer. Doctors pronounced him fit to work and he expressed his strong desire to do so. He has yet to be rehired by the company and has been unsuccessful in gaining employment elsewhere.

I come today with a possible solution. I submit H.R. 1294 not so much as the alpha and omega to solving this problem, but as an important first step which will place us squarely on the side of supporting an end to employment discrimination against cancer survivors.

My bill has three main purposes. They are: to discourage employment discrimination against an individual based on such individual's cancer history; to encourage employers to make reasonable accommodations which will assist the employment of an individual with a cancer history; to increase public recognition of the employability of such individuals.

Behind these purposes is a genuine hope on my part to make a contribution to dispeling the death sentence myth associated with cancer. Considering the findings of a study done by the Metropolitan Life Insurance Co. of 74 of its employees who had a cancer history, or developed cancer while working for the company. They showed the turnover rate among employees with a cancer history was no higher than the rate for people not having cancer. No employee in the cancer group was discharged for absenteeism or poor performance. As a matter of fact, experience indicates that those with the history of cancer are more determined to be on the work place, be punctual, to excel in their performance, because the challenge is greater, and the threat of dismissal hovers ever constantly.

Only 3 percent of the cancer employees were ever placed on disability status, which is far less than the general workplace.

Under my bill it would be an unlawful employment practice for an employer, agency, or labor organization to require as a condition for employment purposes for employment persons with a cancer history to meet medical standards which are unrelated to job requirements or require such employees to submit to any medical examination unless necessary to reveal qualifications essential to job performance, or to reveal any confidential medical information without the express written consent of such employee; and fail to make a good faith effort to explore whether reasonable accommodations can be made for an employee, or perspective employee,

with a cancer history, to enable such a person to fulfill job requirements.

Mr. Chairman, thanks to extraordinary breakthroughs in research and treatment, one out of every two persons diagnosed with cancer are being cured. That is a testament to an enlightened society which is willing to invest its resources to combat the evils of the disease. Yet, we reveal an equally regressive side of our society when we fail to combat a problem such as discrimination against those who have survived cancer. We need to be as aggressive in combating this evil as we are in working to conquer cancer itself.

That is my motivation in authoring this bill which I hope will gain favorable consideration by this distinguished committee.

At this point, I would ask unanimous consent that the written statement of Dr. Sarah Splaver, the remarkable founder and president of CHUMS, Cancer Hopefuls United for Mutual Support, be included in the record.

As you know, Mr. Chairman, Dr. Splaver was scheduled to testify in person today, but on doctor's orders, has been forced to remain in New York City. Her home was burglarized this past weekend and the trauma of this has caused her a great deal of distress.

I would also add, that it was Dr. Splaver who first brought this issue to my attention back in early 1984. She, as a cancer survivor herself, has been a stalwart champion of the rights of cancer survivors to be free from discrimination. Her statement, I know, will make an important contribution to the hearing record and to all discussions on this issue.

Mr. MARTINEZ. If there are no objections, it will be so ordered. Her written testimony will be entered into the record.

[The prepared statement of Dr. Sarah Splaver follows:]

PREPARED STATEMENT OF SARAH SPLAVER, PH.D., PRESIDENT OF CHUMS

The answer to this question is as follows:

I heard the words, "It's maligant," on July 18, 1975. I had breast cancer and chose lumpectomy, rather than mastectomy, as my mode of treatment; that was most heretic at that time. I immediately set about to form the Breast Diseases Association of America to emphasize the importanc of early detection and to inform women that there are alternatives to mastectomy.

Since I was a noted psychologist and author, word spread that I was advising and counseling breast cancer patients, free of charge, to help them with their emotional needs. Many admired my courage in having lumpectomy and were convinced that I would, therefore, have the courage to stand up for the rights of breast cancer patients in varied other aspects of their lives.

As a consequence, I began receiving phone calls and letters from breast cancer patients throughout the country. They complained of two losses. They were losing their friends and losing their jobs. As a psychologist, both of these issues were of concern to me.

It is essential that cancer patients have as little stress as possible, for stress can exacerbate the malignancy and cause recurrence and metastasis. Cancer patients need peace of mind to concentrate all of their emotional and other energies on conquering their cancers. Psychological counseling is of great importance and tremendous value to these patients to combat their feelings of "aloneness" resulting from society's unjust and unwise reaction to cancer. Vocational guidance was needed by those who were having employment problems due to their cancers. I had worked for a number of years as a vocational rehabilitation counselor helping persons with miscellaneous illnesses and disabilities. I am also the author of YOUR HANDICAP—DON'T LET IT HANDICAP YOU published by the Messner Division of Simon & Schuster. Thus, I was uniquely qualified to help these breast cancer patients.

Throughout the later 1970s, I found that approximately one out of four breast cancer patients who could be considered "recovered," i.e., they were five or more

years past diagnosis, were having employment problems. The ratio was even higher among those who were less than five years past diagnosis. It was especially devastating for the latter, who had large surgery, radiation therapy and/or chemotherapy expenses, to find themselves out of work and, thus, out of income at a time when they needed the income most.

These breast cancer patients were having employment problems of three types: (1) Being fired from their jobs because of their cancers; (2) being denied promotions due to their cancers; and (3) being denied employment due to their cancers.

Cancer patients who lose their jobs because of their cancers are generally "forced" to lie when they seek other employment. On the backs of most employment applications, the job candidate is asked, "Have you ever had cancer?" A cancer patient/survivor who has lost her/his job due to a cancer history tends to reply, "No," to this question. Breast cancer patients have a very visible aspect to their cancers. As high as 98% of the breast cancer patients in the 1970s (and prior to that time) had radical mastectomy as their mode of cancer treatment. For almost all worthwhile positions, job candidates must undergo physical examinations. For these breast cancer patients, there was no escape, no denying, no lying; the physician who conducted the physical examination noted that their breasts were missing and knew that they had cancer.

I made many efforts to help these breast cancer patients regain their jobs, or to find new jobs, or to gain promotions to which they were entitled. Sometimes I succeeded; sometimes I didn't. I made contacts with friends of mine who were personnel directors and, thereby, was able to obtain employment for some women with a history of breast cancer.

From 1975 to 1980, I advised/counseled about 15,000 breast cancer patients/survivors. Approximately 25% of the latter involved employment problems and, therefore, for this percentage, this was in the nature of vocational rehabilitation counseling.

I was convinced then, as I am convinced now, that the solution to this problem rests with Federal legislation that would make it illegal for an employer to fire an employee, or to deny a promotion to a qualified employee, or to refuse employment to a job candidate due to that person's history of cancer.

I spoke with my Congressman, of that time, and unfortunately, he seemed not to understand or appreciate the seriousness of this situation.

In 1981, the Breast Diseases Association of America gave way to CHUMS (Cancer Hopefuls United for Mutual Support), a national coalition of cancer patients/survivors and their families and friends, to emphasize LIFE, life with good quality and to provide emotional support for cancer patients, persons with a history of cancers of all sorts.

It was obvious to CHUMS that many problems, including the employment problems, of cancer patients/survivors are due to the "death sentence" myth. A large percentage of our society still believes; that cancer is a "death sentence". Employers do not want to employ or give a promotion to someone who, they think, will not be here on earth for very much longer. Additionally, there is the "cancer is contagious" myth and some workers do not want to be near a fellow worker who has cancer, for fear of "catching" the cancer.

Both of these aforementioned myths are exactly that—"myths"—they are not facts. Cancer is not a death sentence. There are some 5,000,000 of us alive in the United States with a history of cancer and 3,000,000 of us are five or more years past diagnosis. On July 18th, it will be ten years past diagnosis for me. Additionally, there is evidence that cancer is not contagious.

As time marched on into the 1980s, there was a change of Congressmen in my Congressional District and Congressman Mario Biaggi became the Representative of my North Bronx (New York City) District. As President of CHUMS, I went to his office at 3255 Westchester Ave., Bronx, N.Y. 10461, with two fellow constituents of the Congressman, who at that time, were Directors of CHUMS, Debbie Georgens, R.N., and her husband, Robert Georgens. We brought this employment discrimination situation to Congressman Biaggi's attention. Congressman Biaggi was immediately appreciative and supportive of the employment problems of cancer patients/survivors. Not long Congressman Biaggi developed the Biaggi Bill, the Cancer Patients Employment Rights Act.

It is imperative that this Cancer Patients Employment Rights Act be enacted into law.

It is unfair and unjust "persecute" any American simply because she/he developed cancer. The incidence of cancer is rising and this situation can happen to anyone. It is outrageous to take, from any Americans, good citizens, their means of earning a living or deny them the means of earning an income, at a time when that

income is of such great importance, namely, to pay for the costs of the varied modes of treatment needed to help combat the cancer.

Cancer is emotionally destructive. The financial devastation intensifies the emotional devastation. Until the day when a medical cure for cancer is found, we must make every effort, on all fronts, to reduce the trauma of cancer. The diminution or, even better, the demolition of trauma could help to effectuate successful results from the varied modes of cancer treatment (surgery, radiation therapy, and chemotherapy, all of which I have had) and, thereby, hopefully prolong cancer patients' lives and improve survival rates.

Now, in June of 1985, I can say that I have advised/counseled more than 20,000 cancer patients/survivors with a miscellany of cancers. In the main, these cancer patients/survivors have been found to be good workers, with good attendance records and little tardiness. I know the severity of their financial problems. How can cancer patients/survivors summon up all their energies to fight their cancers when they are overcome by financial problems of great intensity? Fighting cancer is enough of a battle without having to contend with the devastating economic aspects of malignancy.

Please help cancer patients/survivors to combat and to conquer their cancers by enacting into law, H.R. 1294, the Cancer Patients Employment Rights Act.

I ask forgiveness for not being present for personal presentation of this paper in the morning of Thursday, June 6, 1985. However, there are "invaders" of varied sorts in our society today. Cancer is one form of "invader". Then, there are those who "invade" our homes, our houses and apartments. On Friday, May 24th, my house was "invaded" by burglars (two burglars, according to the police).

From March 1983 (when I appeared on the Phil Donahue Show) to Labor Day 1984, as a result of the deluge of responses (to my appearance on this Show)—thousands of mail and phone responses from cancer patients/survivors from throughout the United States, Canada, Mexico and other areas of the world—I worked at least 100 hours per week for CHUMS (in the main, for little, if any, pay, for CHUMS has very limited funds). Since Labor Day 1984 (and prior to March 1983), I have been working at least 70 to 80 hours per week for CHUMS.

CHUMS held its Annual Luncheon at the Hotel Roosevelt on Sunday, May 19th, at which Congressman Biaggi was present. I worked additional hours beyond the 70 to 80 hours per week, for many weeks preceding the Luncheon, to help make the Luncheon a success so that cancer patients/survivors would have an enjoyable afternoon. At this Luncheon, I was honored as the "Woman of the Year" for "a decade of extraordinary dedication to cancer patients" and also received a plaque from the New York City City Council (a City Council Citation) for my dedication.

I was under doctor's orders to get a good rest, after the Luncheon, in order to be in Washington on Wednesday, June 5th and Thursday, June 6th. Instead of a rest, I have had to cope with the overwhelming trauma of the burglary of Friday, May 24th and have been told by the police not to sleep in my house until gates and bars (guards) are installed in the windows and doors of my basement and first floor. The gates and bars have not as yet been fully installed because they must be custom-made to fit each window and this was delayed due to the Memorial Day weekend.

Words cannot sufficiently describe my present state of exhaustion. My blood pressure has risen high and I am under doctor's orders not to travel to Washington at this time.

Although I am unable to be presently physically, I am present with you in spirit. I beseech you, please, to ease the plight of cancer patients/survivors. I implore all members of Congress: please have compassion for cancer patients/survivors and enact into law H.R. 1294, the Cancer Patients Employment Rights Act.

Mr. MARTINEZ. Thank you very much, Mr. Biaggi, for that beautiful statement.

At this time, I would like to take the opportunity to introduce a member just joining us, a member of the subcommittee, Paul Henry from Michigan.

Mr. Atkins, do you have a statement at this time?

Mr. ATKINS. No. Thank you, Mr. Chairman.

Mr. MARTINEZ. Mr. Henry?

Mr. HENRY. No. I am fine. Thank you, Mr. Chairman.

Mr. MARTINEZ. Thank you.

Our first panel will be Dr. Robert J. McKenna, president of the American Cancer Society, New York, NY, and Mr. Michael Spekter, attorney, Washington, DC.

STATEMENT OF ROBERT J. McKENNA, M.D., PRESIDENT, AMERICAN CANCER SOCIETY, NEW YORK, NY, AND PROFESSOR, CLINICAL SURGERY, UNIVERSITY OF SOUTHERN CALIFORNIA SCHOOL OF MEDICINE, AND MICHAEL L. SPEKTER, ATTORNEY AND MEMBER OF THE BOARD OF DIRECTORS, ONE FOURTH/THE ALLIANCE FOR CANCER PATIENTS AND THEIR FAMILIES, A PANEL

Dr. McKENNA. Mr. Chairman, I am Dr. Robert McKenna from Los Angeles. I am a surgical oncologist who has treated only cancer patients for the last 31 years.

As president of the American Cancer Society, I am delighted that you are addressing this issue. It is one that is very dear to our hearts.

I first became aware of this problem in 1969 when two of my patients who had cancer and were cured, and still alive today, were rejected from new job applications in the aerospace industry.

Since then, we have had a lot of talk and some action in this area. In 1982, I chaired the Vocational Employment Subcommittee of a Cancer Rehabilitation Conference, lasting 1 week, at Dulles Airport, sponsored by the National Cancer Institute.

We addressed this problem and identified there is a real problem in cancer discrimination in employment and insurance. We tried through that committee to do various things, which were very unsuccessful.

In 1974, we got going in California and got legislation on the books eventually, 3 years later, which is probably the best legislation in the country but it doesn't answer the whole problem. Forty-five of our States now have such legislation which addresses it in varying ways, but does it incompletely.

The issues are several. One is outright firing after return to work if you have had cancer. I constantly hear about this problem. My son happens to be a surgeon—a little bit younger than I am—working at a cancer hospital in Houston—the Anderson. He removed a lung on a lady not more than a month ago, had a curative operation. She went back to work to find out she was fired. This story is repeated constantly. It is a lack of understanding on the part of employers, people who think cancer still is incurable.

I address to you that one out of every three Americans will be touched by cancer at some time in their lifetime. Yes, we do have 5 million alive today. Yes, we are curing 51 percent of the people. We have a goal in this country to cure 75 percent by the year 2000. There are a lot of survivors who need your help.

The second aspect of this problem is that these individuals who do return to work are locked into their jobs—they can't transfer to a new company for new opportunities, because they will lose their fringe benefits, they will not be hired because of the fear that the employer thinks they are either going to be sick, they are going to have to have more care and treatment. Now, there are an awful lot of people who need your help in this area.

Now, there are many other subtle problems associated with this, and I don't go into all of those today.

There is another issue here, and that is, is the cancer patient disabled? You have to be disabled under the present statute to have any redress. I address to you that most cancer patients are not disabled. Seventy-eight percent of the cancer patients that have been treated go back to work—not all cured, but many can continue working for many years. But if we have got 51 percent cure rate, that's a lot of Americans who are cured forever, and to be put on the welfare rolls, or have some other solution to their lack of economic advancement, the right to work is one that I think is part of the Civil Rights Act.

The disability question is a Catch-22 situation. I talked to a physician not more than a month ago who had done a laryngectomy on a man 8 years ago. That means he lost his voice box. He couldn't speak without learning to speak all over again, but he did, he did it very well. He was refused by 26 employers for new employment. These are these special cancer people who have the greatest problems. He went down to get disability. They turned him down because he is not disabled. They said you have got no cancer, you are a physical human being, and you should be able to get back to work. Now, here is a fellow who has a lifelong problem of getting back into the mainstream.

Other people have special problems. Childhood cancer. A child that has been treated successfully—and we are now curing 62 percent of all children with cancer in this country, and this rate continues to improve every year with our advances—had never been in the work place, and they are turned down when they are found out that they have cancer. These are people who are not eligible to enlist in the Armed Forces. They are not eligible for many scholarships. They are turned down for a variety of job applications. So they are a special problem.

So this is a complex problem which really needs your help. I urge that you pass this bill. I heartily endorse Mr. Biaggi's bill. The American Cancer Society stands strongly behind this bill and would like to see the legislation enacted.

Thank you very much.

I would like to submit my statement for the record. I would also like to submit the legal brief from the Legal Aid Society of San Francisco to amend some of the concepts in this bill.

Mr. MARTINEZ. Without objection, so ordered.

[The prepared statements of Dr. Robert J. McKenna, and the Legal Aid Society of San Francisco follow:]

PREPARED STATEMENT OF ROBERT J. MCKENNA, M.D., PRESIDENT, AMERICAN CANCER SOCIETY

Good morning Mr. Chairman. I am Dr. Robert J. McKenna, President of the American Cancer Society. I am also a Professor of Clinical Surgery at the University of Southern California School of Medicine.

Mr. Chairman, on behalf of the Society and its two and one-half million volunteers, I want to express our deep appreciation and gratitude to you and Members of the Subcommittee for your interest in the problems of cancer patients in the workplace. I would also like to thank your colleague, Mario Biaggi, for introducing H.R. 1294, the Cancer Patients Employment Rights Act of 1985, for which this hearing is being held today.

Mr. Chairman, some of the 900,000 Americans diagnosed with cancer this year will, following their treatment, face questions like, "Will I be able to work after cancer? Will I be able to have to afford health insurance after cancer?"

To work is to survive, be independent and self-sufficient; to earn is a measure of personal adequacy and worth. A job usually means access to health care through group insurance benefits. Both employment and health insurance are of major importance to most individuals living after a diagnosis of cancer.

There are over 5 million Americans living today who have a history of cancer; 60 percent of them were diagnosed more than five years ago and the majority can now be considered cured. More than 850,000 Americans are added to this group each year.[1]

The annual incidence of cancer in a study of over three-quarter of a million workers was 2.11 per thousand employees.[2] The cancer rate in the work force increases with age of the employees (see table 1). The cancer rate for females is 2.57 and is greater than the cancer rate for males (1.67) until the seventh decade is reached. In this study from the Bell Telephone System, 82 percent of the males who had cancer were over age forty and 77 percent of the females were over age forty. Cancer rates for the sixth decade were more than ten times the rate for the third decade.

TABLE 1.—CANCER INCIDENCE IN THE WORK FORCE

	Age specific rate for cancer per 1,000 workers	
	Male	Female
Age (years):		
Less than 20	0.3	0.3
20 to 29	.5	.7
30 to 39	.7	1.8
40 to 49	1.9	4.1
50 to 59	4.9	7.1
60 plus	9.9	9.0

Mr. Chairman, as a consequence of cancer, many psychosocial issues impact on both employee and employer, as well as on the family and on society. A variety of social attitudes and individual misconceptions surface at the time of the cancer diagnosis and may resurface years after.

Although no scientific evidence exists that cancer is contagious, fear that it might be is sometimes a concern of fellow employees, employers and even of friends and neighbors.

Cancer is always a life-threatening illness, and some individuals expect a fatal outcome even though the prognosis may be excellent; consequently, some workers will never attempt to return to work. Some employees may elect to take prolonged sick leave, permanent disability, early retirement and a pension when eligible. The employer may also discourage a return to work, expecting that frequent absences will be needed for future treatment, for persistent or recurrent cancer, or for complications of prior treatment.

The well-meaning employer may be self-serving when concerned about future health costs for the employee with a past history of cancer as well as the cost of other fringe benefits. Employers are sometines concerned that Workman's Compensation Insurance will cost more if a recovered cancer patient is injured on the job. Some employers are unwilling to train a less-than-perfect individual for new duties, preferring instead to leave a former cancer patient stuck in his original job. Some employers have concerns about productivity of the patient with cancer who is working, but such fears are unfounded. These and other attitudes and misconceptions compound the problems which many cancer victims face on entering or retaining their place in the work force. Educating both workers and employers should enlighten both about the hopeful side of cancer.

The average length of sick leave due to cancer was 93.3 days for men and 108.3 days for women.[2] Job absence due to cancer,[3] while usually prolonged, is infrequent

Footnotes at end of article.

(14th for men and 15th for women) when compared with other illnesses for job absence of seven or more days.

Insurance benefits for continuation of income have become more generous in recent years. The duration of this income protection varies from company to company depending on length of service. Not all patients return to work. Cancer is the leading cause of death for women in the Bell Telephone series[3] and the second leading cause of death for men.

Most employees return to their jobs after cancer treatment; 78.8% of women and 70.6% of men were able to resume employment.[3] The sex difference is explained largely by the higher death rate of men (23.4%) compared to women (13.7%) (see table 2). This positive outcome of cancer treatment (return to work) reflects the progress which has been made in cancer control through improved treatment, early diagnosis and even prevention; *e.g.*, precancerous lesions such as are found in cervical carcinoma in situ are 100% curable.

TABLE 2.—EMPLOYMENT AFTER CANCER TREATMENT [3]

[In percent]

	Male	Female
Return to work	70.6	78.8
Benefits exhausted put on pension disability	6.0	7.5
Died before return to work	23.4	13.7

Mr. Chairman, it is very reassuring for an employee to know that a job is waiting when he or she is able to return to work. Most cancer patients are anxious to return but there are exceptions; some have fears for their future, and some fear rejection by fellow employees and their employer. Encouragement by the oncologist, and professional counseling prior to return to work, are far from routine but could be of help in coping with anticipated or actual attitudinal reactions in the workplace.

The location of the employee's cancer may determine ability to return to work, since it appear that some cancer sites may be associated with no physical or psychological disabilities. Stone's report on the experience at the Bell Telephone Company showed a return to work for several cancer sites: genital tract-88%; breast-85%; gastrointestinal tract-68%; and lung-48%.[3]

All patients should be encouraged to work after cancer treatment. The patient with limited life expectancy as a result of the cancer should have the hope of returning either to full or part-time work if work-able. The cancer patient with disability deserves maximum rehabilitation and vocational retraining; examples would include the patient with a laryngectomy [4] or an amputation.[5]

Most studies about returning to work after cancer have been undertaken either in one industry or in one medical center concerning one cancer site. The California Division of the American Cancer Society commissioned a study [6] of 810 patients randomly selected throughout the state. Patients aged 20 to 70 were interviewed 6 to 24 months after their cancer diagnosis, a time delay which eliminated some of the more lethal cancer sites such as leukemia and lung cancer, where death frequently intervened before the interview.

The more a patient earned at the time of cancer diagnosis, the more likely the patient would be working after treatment. Only 3% of those earning more than $25,000/year were not working after cancer, in contrast to 7% of the $15,000–25,000 group, and 11% of the less than $7,500 group (see table 3). Some low-income individuals have more physically demanding jobs and as a result, some might be expected to give up their job due to the effects of cancer.

TABLE 3.—CANCER EMPLOYMENT VERSUS INCOME [4]

	Percent employed		Now unemployed
	At cancer diagnosis	2½ yr after cancer	
Annual income:			
$25,000 plus	65.7	62.3	3.4
$15,000 to 24,999	63.5	56.1	7.4
$7,500 to 14,999	54.1	43.0	11.1
Under $7,500	35.2	17.6	17.6

Age proved to be another significant variable in employment after cancer. More job loss was noted in ages 46–64 (years) when compared with younger patients (see table 4).

TABLE 4.—CHANGE IN EMPLOYMENT AFTER CANCER BY AGE [6]

Age	Percent employed		Disability	Retired	Homemaker
	Full time	Part time			
45 or less	+1	+4	+2	–	−2
46 to 64	−15	+2	+7	+6	+1
65 and over	−11	–	+1	+11	–

Significant variations in productive employment following a diagnosis of cancer were observed for different cancer sites (see table 5). Patients with breast and uterine cancer were the least affected, while patients with leukemia and lung cancer were the most affected. Some employees were currently working part-time, some were retired and others were on disability. The net effect was a loss of job income for 1/7 of those with prostate cancer, ⅓rd of those with oral cancer and half of those with lung cancer, leukemia, and lymphoma.

TABLE 5.—PERCENT CHANGE IN PRODUCTIVITY AFTER CANCER [6]

Cancer	Employed				Homemaker
	Full time	Part time	Disability	Retired	
Prostate	−10	+4	+4	+4	–
Uterus	−8	+1	+1	+2	+1
Breast	−10	+1	+1	+5	–
Oral	−14	+5	+9	+14	–
Leukemia/Lymphoma	−27	+3	+13	+10	+3
Lung	−26	−3	+13	+10	+3

Some employers with little medical justification require an arbitrary interval between the date of cancer treatment and job application to be sure the cancer is cured. This interval might very from two to ten or more years. Such personnel policies seem arbitrary with no relation to stage or extent of cancer and with no relation to the individual prognosis.

The Metropolitan Life Insurance Company [7] has been selectively employing work-able cancer patients since 1957. Between 1957 and 1971, 74 applicants were hired with a cancer history, a rate of 0.63/1000 new employees. Approximately the same number of applications with a cancer history were not hired during the same period.

Turnover rate, absenteeism and work performance by the group were comparable to a matched company population. Only 2.7% developed a cancer recurrence. Dr. Wheatley, Medical Director of the Metropolitan Life Insurance Company, concluded that selective hiring of patients who have been treated for cancer, in positions for which they are qualified, is a sound industrial practice. He states that a wait until one might be sure a patient is cured of cancer before hiring will create hardships and does not reflect modern successful outcomes of cancer therapy. Delays are especially difficult for young persons who have not establishes a vocational career. He advises a change in the attitude of oncologists and occupational physicians toward the hiring process of the work-able cancer patient. He recommends that the oncologist candidly provide a job reference with a summary of cancer treatment, performance status and prognosis. It is unreasonable to demand that the cancer patient be "cured" before being eligible for employment.

Mr. Chairman, some employers still refuse to hire work-able cancer patients using

a variety of excuses or subterfuges. As you know, some workers are protected under the Rehabilitation Act of 1973 (Sections 503 and 504) and the Vietnam Era Veterans Readjustment Act of 1974. In addition, more than 37 states have Affirmative Action Fair Employment Acts to prevent employment discrimination of the cancer patient. Most legal definitions of job discrimination assume that the recovered cancer patient is disabled—and as a group, they require legal protection to insure equal opportunity in employment. Most recovered cancer patients do not have limitations of physical and mental capacity, as do many other disabled persons. The work-able cancer patient may be able to perform the job, but simply may be unable to gain access to the job.

In 1969, two of my cured cancer patients were employed in the aerospace industry and were laid off due to a contract completion. They were offered new employment by other aerospace firms but were later rejected when their prior cancer history was revealed. This problem was reported to the California Division of the American Cancer Society and an Ad Hoc Committee was formed to review employment discrimination. In 1973, 44 case reports documented that employment problems did exist for cancer patients.[8] Three studies by Feldman [9-11] of employment problems of the White Collar Worker, the Blue Collar Worker, and the Child with cancer were funded by the American Cancer Society. Subsequently, the Greenleigh Study [9] confirmed the Feldman findings. The California Legislature amended the Fair Employment and Housing Act by the passage of the Siegler Bill (AB 1194) prohibiting employment discrimination against the cancer patient in California.

Work symbolizes adequacy, independence and control over one's affairs and is a means to meet needs and obligations. A quote from Jon, a 42-year-old bookkeeper with a colostomy,[12] summarizes this common feeling: "I received a death sentence twice, once when my doctor told me I have cancer, then when my boss asked me to quit because the cancer would upset my fellow workers. Except for my wife, that job was my whole world!"

Some still doubt that significant employment discrimination for a work-able cancer patient exists.[13 14] Studies by Feldman,[9-11] Smith,[15] and Koocher,[16] have clearly documented its existence. Job rejection on the basis of a past history of cancer happens to 25% to 45% of workers, the higher figure applying to the blue collar worker and youth (see table 6).

TABLE 6.—EMPLOYMENT ISSUES FOR THE WORKER WITH A CANCER HISTORY

	Number	Job rejection (percent)	Work-related problems (percent)
White collar [9]	130	22.0	54
Blue collar [10]	111	45.0	84
Youth [11]	83	45.0	*25
			†51
Do.[16]	60	25.0	
NCI study [15]	95	13.7	

*Work. †School.

Work-related discrimination may be classified into three categories: [12]

1. The most serious includes dismissal, demotion, discontinued health and/or life insurance, reassignment of hours or location of work, no salary increases as given other employees, etc.
2. Work problems arising from attitudes of co-workers; *i.e.*, shunning, mimicry, overt hostility, etc.
3. Problems stemming from workers' own attitudes, anxieties, defensiveness, fearfulness about how they should be perceived by others which have led to avoidance or alienation by the co-workers. This could result in a hostile behavior by the patient to fend off anticipated actions by others and may result in dismissal.

Job discrimination is described by Barofsky [17] as the social death of the cancer patient. Competition is an everyday event in our country and happens daily to all of us in job selection, promotion, training, etc. Job discrimination occurs when the cri-

teria of selection are inappropriate, *e.g.*, age, sex, religion, marital status, or a cancer health history. Such job discrimination should be fought with vigor.

Should the employer be informed of a cancer history? It is legally wrong to falsify a job application, but it is extremely difficult to admit the truth when one knows it might have a negative impact. If, when and under what circumstances a patient should tell the employer or the potential employer that he or she has had cancer in the past poses an ethical dilemma.

Mr. Chairman, cancer patients have rarely taken advantage of their legal rights to win back a job when they have been laid off, or to try to gain access when they have been denied. Barofsky [17] reviewed the litigative literature in 1982 and found only 2 court cases concerning the rights of cancer patients; only 3 union contract arbitration cases which dealt with cancer patients; and only 1.3% of complaints filed from 1974 to 1978 under the Rehabilitation Act of 1973 involving cancer patients. It is probable that more litigation will occur in the future, based upon the experience we are seeing in California where more than 10% of the state's total number of disability complaints are filed by persons having a history of cancer. Perhaps discriminatory employment practices relative to the cancer patient might be eliminated through better cancer information for the employer.

Large companies should be the most altruistic and humanistic in hiring the recovered cancer patient; such applications might average 0.2% of job applicants. The Armed Forces and some governmental agencies are still using discriminatory employment practices, while there has been significant improvement since 1974 in industry.

Each job applicant should be considered individually and fairly on the basis of qualifications and physical ability. Many employers do not understand that cancer is many different illnesses requiring a wide range of treatment. *Most cancer patients are work-able.*

Mr. Chairman, I hope that my testimony this morning has helped to give you and your colleagues a clearer picture of the problem faced by cancer patients in the workplace. H.R. 1294, as introduced by Congressman Biaggi on February 27 of this year, and now cosponsored by more than fifty of your colleagues, should be approved by this subcommittee. The stated objectives of this legislation are: (1) the elimination of employment discrimination against individuals who have a history of cancer; (2) increased public recognition of the employability of individuals who have a history of cancer; (3) the encouragement of greater accommodation for individuals who have a history of cancer, in order to increase available job opportunities for them; and (4) the encouragement of further legislation designed to eliminate discrimination (other than employment discrimination against persons with a history of cancer. The problem of insurability of cancer patients is one such issue. While not the subject of this hearing, I believe it deserves oversight by this Committee.

Mr. Chairman, passage of H.R. 1294 would help cancer patients. It would help individuals, having just won a hard-fought battle for life, from facing another, totally unnecessary battle for their economic well-being, because of lack of information or just plain fear on the part of employers.

Mr. Chairman, if it meets with your approval, I would like to submit for the record, a letter and memorandum prepared by the Legal Aid Society of San Francisco. These materials contain constructive suggestions regarding technical changes which the Committee may want to consider.

Thank you Mr. Chairman, I would be happy to answer any questions you or your colleagues might have.

FOOTNOTES

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PREPARED STATEMENT OF THE LEGAL AID SOCIETY OF SAN FRANCISCO

As we discussed at our meeting this past Friday I am enclosing for your information and use a brief summary and analysis of the Cancer Patients Employment Rights Act which has been prepared by members of my staff. I hope that our comments will be of assistance to you in your upcoming meetings with Congressman Biaggi and Vice President Bush. What follows is an outline of the contents of the attached memorandum.

The Act in question has been presented as an amendment to Title VII of the Civil Rights Act of 1964, a long established civil rights statute that prohibits discrimination in employment on account of race, sex, national origin, and religion. Because Title VII has been enforced for more than twenty years, there are court interpretations that might hinder as well as help those with a history of cancer who are pursuing claims of discrimination. There are also sections of Title VII which, if applied to persons with a history of cancer, would severely limit their scope of remedies such as the accommodation requirement for religion which is a de minimis rule that bears no relationship to its counterpart in handicap discrimination laws. However despite these concerns we recommend that the Act be introduced as an amendment to Title VII with careful statutory drafting and clear legislative history to avoid the problems that we have identified in the memorandum.

The Act goes on to define "cancer history" to mean the status of any individual who has, or has had cancer, or who is diagnosed as having or having had cancer. This definition is too restrictive as it omits from coverage those who have precancerous conditions and those who are perceived as having cancer but do not, and those who are deemed by the employer to present a future risk for getting cancer. Thus, the definition should be expanded to include these additional categories.

With regard to section 3(c)(1) and 3(c)(2) pertaining to medical standards we believe that these provisions are very important to those with a history of cancer because they are often used to disqualify those individuals from employment. Medical standards are overbroad, failing to adapt a person's particular medical condition to the essential functions of the job in question. This section therefore is extremely important to the policies underlying the Act.

"Reasonable accommodation" is a crucial concept in the area of employment discrimination law on account of handicap. Section 3(c)(3) defines that provision too narrowly. It only suggests that employers explore whether reasonable accommodation can be made rather than follow laws (such as the California Fair Employment and Housing Act) which require an employer to provide reasonable accommodation unless it results in an undue hardship. In addition using examples of what kinds of acts constitute reasonable accommodation in the body of the Act can aid employers in understanding the scope of their responsibilities under the law. Lastly, because "reasonable accommodation" is a term already contained in Title VII pertaining to discrimination on account of religion it has come to have a particular meaning in that context. It is imperative, therefore, that a simple definition of "reasonable ac-

commodation" for the purposes of the Act be specified in it and that the legislative history makes clear that in no event does that definition embrace the interpretation of those same words as used in the religious discrimination area.

Sections 4(a) and 4(b) reference "job requirement" as the standard to meet in adjudging whether a person with a history of cancer can perform the job. This term is restrictive and could be applied to mean that cancer survivors who could perform all but the nonessential job duties might not have protection. Therefore we recommend that the term "essential job function" replace the term "job requirement". In addition, the way in which this provision is written it would seem to suggest that if there are initial safety problems in hiring a cancer survivor the employer need not take the step to examine whether reasonable accommodation could eliminate the safety risk. This result is clearly inconsistent with section 3(c)(3) and contravenes the purposes of the Act.

Section 4(b) of the Act also presents problems of interpretation because its language would appear to permit an employer to refuse to hire a covered person if his or her illness presented a future risk. Therefore, the words "regardless of the availability of reasonable accommodations" should be stricken. Finally, this provision does not articulate with clarity that it is the employer's burden of proof to show that the employee is unable to perform the job safely. The words "the employer must demonstrate" should be inserted to resolve this problem.

If you have any questions concerning these suggestions please do not hesitate to contact me. We would also be pleased to discuss these matters with Congressman Biaggi and his staff should he desire us to do so. I would also like to take this opportunity to commend the American Cancer Society for its affirmative efforts to secure legislation on this very important issue. We would be happy to assist in any way we can to ensure the passage of the Act.

In closing I would like to thank you for your responsiveness to our proposal and for your kindness in making the time to talk with me and Helen about it. We are excited about the prospect of working with you and others at the American Cancer Society in educating the public about the employment rights of those with cancer. In the meantime, I look forward to hearing from you during the latter part of this week regarding the outcome of your presentation in New York.

MEMORANDUM

Re Analysis of the Cancer Patients' Employment Rights Act
To: Dr Robert J. McKenna
Fr: The Legal Aid Society, San Francisco, 693 Mission Street, San Francisco, CA 94105, (415) 495–6420

BACKGROUND

On February 27th of this year Congressman Biaggi introduced H.R. 1294, the Cancer Patients Employment Rights Act. It enjoys the full support of both the American Cancer Society (ACS) and Cancer Hopefuls United For Mutual Support (CHUMS). Its stated objectives are (1) the elimination of employment discrimination against individuals who have a history of cancer, (2) increased public recognition of the employability of individuals who have a history of cancer, (3) the encouragement of greater accommodation for individuals who have a history of cancer in order to increase available job opportunities for them, and (4) the encouragement of further legislation designed to eliminate discrimination (other than employment discrimination) against persons with a history of cancer.

The analysis which follows is based on a critical review of the statutory language in light of the purposes of the Act. Where it appears appropriate, the language of the bill is compared to similar language in Title VII, the Rehabilitation Act of 1973 and California's Fair Employment and Housing Act. A review of comparable language in statutes such as these enables us to more accurately determine how the courts will interpret similar language in Congressman Biaggi's bill and, as a consequence, to suggest alternative language which effectively avoids pitfalls which may accompany such language.

ANALYSIS OF H.R. 1294

I. The Statistical Foundation For The Cancer Patients Employment Rights Act

H.R. 1294 represents a continuing effort on the part of ACS, CHUMS and Congress to eliminate employment discrimination against persons with a history of cancer. Statistical evidence of such discrimination continues to accumulate and it is now clear that the incidence of such discrimination is increasing repidly as both the

number of people in the United States who are diagnosed as having cancer and the percentage that are cured increases. ACS estimates that, at present, over 5,000,000 people have a history of cancer in the United States and that the percentage of these individuals who have suffered employment discrimination is an alarming 25%. In California, where employment discrimination against persons who have a history of cancer is prohibited, employment discrimination complaints on this basis total more than 10% of the state's total number of disability complaints and the percentage increases every year. Thus, the importance of H.R. 1294 cannot be overestimated.

II. Effect of Placing The Cancer Patients Employment Rights Act Within Title VII

Although Congress has enacted several bills which prohibit employment discrimination, the most comprehensive are the Rehabilitation Act of 1973 and Title VII of the Civil Rights Act of 1964. The Cancer Patients Employment Rights Act of 1985 would amend Title VII. As an amendment of Title VII, the Act becomes a part of an established antidiscrimination effort which has both the advantages and disadvantages of twenty years of interpretation. Thus, where the Biaggi bill uses language which is found elsewhere in Title VII, the language is likely to inherit the meaning ascribed to it elsewhere in Title VII. This result is welcome when the intent of the new language and the meaning of the old are coincident, but unwelcome when they are not.

For example, the meaning of the term "accommodation" is not the same in Title VII as it is in the Rehabilitation Act of 1973. Under Title VII the term has been interpreted narrowly such that an employer's responsibility to accommodate the needs of an employee are not as great as it is under the Rehabilitation Act of 1973. For this reason, the term "accommodation" in H.R. 1294 may be interpreted narrowly unless defined otherwise in the bill itself.

Furthermore, Title VII recognizes certain general defenses which would apply to H.R. 1294 if it became a part of that Act. For example, employers are exempt from coverage under the Act if they employ less than 15 employees. In addition, Title VII does not cover employers which are private clubs or religious organizations. As a final example, title VII allows an employer to discriminate in the terms and conditions of employment pursuant to a bona fide seniority system. As a consequence, an employer's duty to accommodate an individual who has cancer or a history of cancer may be vitiated by a bona fide seniority system. (This could occur where a union contract requires certain benefits such as "light duty" or special work hours to be opened to bidding by seniority and the cancer patient needs such accommodation—the seniority system frustrates the employer's desire to accommodate the individual with a history of cancer.) It should be stressed that as a part of Title VII, H.R. 1294 will be subject to the same general limitations as the rest of the Act's provisions unless the bill explicitly states otherwise.

Recommendation.—Even given the exceptions to and limitations of Title VII mentioned above, that Act covers far more employers (and thus protects more employees) than the Rehabilitation Act of 1973. In addition, the general limitations of Title VII which may be inappropriate with respect to the Cancer Patients Employment Rights Act can be eliminated through carefully crafted statutory language in light of the purposes of Biaggi's bill. Thus, considered in this light, it appears appropriate to include H.R. 1294 within Title VII.

III. Definition of "Cancer History," Section 3(a)

The term "cancer history" in H.R. 1294 means the status of any individual who has, or has had cancer, or who is diagnosed as having, or having had cancer. For the purposes of that definition the term "cancer" refers to any disease characterized by uncontrolled growth and spread of abnormal cells. This definition both clarifies and limits the protections afforded under the Act.

For example, it is unlikely that individuals with precancerous conditions would be protected from employment discrimination under the bill since, presumably, they do not have, have not had, have never been diagnosed as having or having had cancer. Thus, a woman with a family history of cancer who needs close monitoring of her physical condition because she is at risk of developing cancer would not be protected under the bill. Again, an individual with "active cells" that are not deemed cancerous is likely unprotected by the bill.

In addition to persons who have pre-cancerous conditions, it is unlikely that Biaggi's bill protects persons who are *regarded* as having a history of cancer from employment discrimination. Examples of this situation include: (a) an employer mistakenly believes an employee or applicant for employment has or had cancer and terminates or refuses to hire him for that reason, (b) a woman goes for a check-up or breast examination or is simply worried about cancer because of certain symp-

toms and the employer denies her a promotion for that reason (it turns out the woman does not have cancer), and (c) an employer terminates an employee because he believes rumors that the employee has cancer (the rumors are false).

Recommendation.—In California cancer survivors are protected from employment discrimination pursuant to the California Fair Employment and Housing Act (FEHA). [Cal. Gov. Code sections 12900 et seq.] The relevant definition in the FEHA which provides for protection of cancer survivors includes language which enlarges the scope of its coverage—i.e., "related to or associated with . . . cancer". Such words of enlargement have enabled California to protect individuals who have pre-cancerous conditions or "active cells" as well as those who are perceived by their employer to have a history of cancer.

The Rehabilitation Act of 1973 in 1974 includes specific language intended to protect persons regarded or perceived as having disabilities, whether or not such persons actually have disabilities. The Joint Conference Report issued in 1974 explained in great detail what Congress intended when it amended the definition of a "handicapped person" under the Act: '[The new definition] clarifies the intention to include those persons who are discriminated against on the basis of handicap, whether or not they are handicapped, just as Title VI of the Civil Rights Act of 1964 prohibits discrimination on the ground of race, whether or not the person discriminated against is in fact a member of a racial minority. [The new definition] includes within the protection [of the Act] those persons who do not in fact have the condition which they are perceived as having . . . . [These people] may be subjected to discrimination on the basis of their being regarded as handicapped."

Given that one of the purposes of the Bieggi bill is to discourage employment discrimination against an individual based on such individual's cancer history, it seems advisable to amend the definition of the term "cancer history" in the bill so as to include within its purview individuals regarded as having a history of cancer and individuals with pre-cancerous conditions. Experience in California under the FEHA and with federal statutes such as the Rehabilitation Act of 1973 and Title VI indicate that such an amendment has a prophylactic effect and prevents erosion of the basic protections afforded under the bill.

IV. Overbroad Medical Standards Made Unlawful by the Bill and Doctor-Patient Confidentiality, Section 3(c)(1)(A) and Section 3(c)(1)(B)

It has been said that discrimination on the basis of, among other things, sex, race, national origin and physical handicap, is simply the refusal to assess each individual as an individual. Instead, the individual is seen as a member of a class and assumed to have characteristics which are either reasonably or unreasonably ascribed to that class. In the context of employment discrimination against the physically handicapped, generalizations about the disabled have found their most insidious expression in pre-employment medical examinations which request information about conditions that are wholly unrelated to the requirements of the job sought. In an effort to assure that employment decisions are not based on class generalizations about the physically handicapped both California and the Rehabilitation Act of 1973 have adopted an individualized assessment approach to medical screening in that context.

Specifically a section of the Rehabilitation Act of 1973 requires that ". . . an agency may not conduct a preemployment medical examination and may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. An agency may, however, make preemployment inquiry into an applicant's ability to meet the medical qualification requirements, with or without accommodation, of the position in question, i.e., the minimum abilities necessary for safe and efficient performance of the duties of the position in question."

H.R. 1294, in keeping with a more sophisticated understanding of the nature of discrimination against the disabled, has also adopted the individualized assessment approach to medical screening. In addition, concerned with the maintenance of the confidential nature of the doctor-patient relationship which is often compromised in the pre-employment setting, the bill restricts the information which an employer may obtain regarding an employee or applicant's cancer history and further restricts that employer's ability to disseminate such information if obtained.

The Code of Ethical Conduct of the American Occupational Medical Association states in relevant part: ". . . employers are entitled to counsel about the medical fitness of individuals in relation to work, but are not entitled to diagnoses or details of a specific nature." The information communicated by the physician to the employer should therefore be limited to his or her findings regarding the employee's functional limitations.

Recommendation.—It is our opinion that this section of H.R. 1294 relating to medical standards [Subsections 3(c)(1) and 3(c)(2)] is well drafted and extremely important.

V. The Definition of Reasonable Accommodation, Section 3(c)(3)

As drafted H.R. 1294 clearly recognizes a need for employers to make efforts to remove barriers that stand in the way of otherwise qualified disabled applicants and employees. These efforts are called reasonable accommodation, and they are necessary to afford cancer survivors an equal opportunity to obtain employment and perform to the best of their ability. Providing accommodation such as rearranging work schedules for radiation treatments or allowing time off for doctors and hospital visits is a critical aspect of integrating cancer survivors into the working world. Accordingly, successful legislation must contain meaningful provisions for accommodation.

Section 3(c)(3) of H.R. 1294 attempts to define the concept of accommodation. It does not, however, clearly articulate the type of affirmative obligation to accommodate which has been expressed in cases brought under either the Rehabilitation Act of 1973 or California's Fair Employment and Housing Act. Section 3(c)(3) merely suggests that employers "explore whether reasonable accommodations may be made . . . ." In contrast, California and Rehabilitation Act cases place employers under an affirmative duty to provide reasonable accommodation unless it constitutes an undue hardship to the employer. The latter approach plainly breathes life into the concept of accommodation.

Moreover, section 3(c)(3) does not embody types of accommodation which could be provided. Under California and Rehabilitation Act cases, the concept of reasonable accommodation has been demonstrated by giving examples of its application. Reasonable accommodation has been found to include, but not be limited to, such measures as job restructuring, reassignment or transfer, part-time or modified work schedules, modification of equipment or other similar actions. The meaning of "undue hardship" has also been clarified. Factors to be considered include, but are not limited to:

(1) The overall size of the establishment or facility with respect to the number of employees, the size of budget, and other such matters;
(2) The overall size of the employer or other covered entity with repect to the number of employees, number and type of facilities, and size of budget;
(3) The type of the establishment's or facility's operation, including the composition and structure of the workforce;
(4) The type of the employer's or other covered entity's operation, including the composition and structure of the workforce;
(5) The nature and cost of the accommodation involved;
(6) The availability of state, federal, or local tax incentives; and
(7) The amount of assistance available from other agencies or organizations, including the California State Department of Rehabilitation, the U.S. Department of Health and Human Services, and other private and public agencies concerned with the physically handicapped.

This list of examples of what can constitute reasonable accommodation and specific criteria for assessing undue hardship has served to elucidate the bounds of reasonable accommodation.

A separate concern about the drafting of section 3(c)(3) was touched upon earlier. In other Title VII cases, the scope of an employer's duty to accommodate has been interpreted narrowly. Specifically, this narrow construction has arisen in Title VII cases which involve a claim of religious discrimination. These cases have essentially held that an accommodation which imposes anything more than a "de minimus" cost in wages or loss of efficiency would be an impermissible hardship to the employer. This "de minimus" standard, if applied to cases brought by cancer survivors, could render the employers duty to accommodate almost meaningless.

Since the religious discrimination cases, which primarily address first amendment issues, are fundamentally different from situations raised by cancer survivors, it can be argued that the "de minimus" standard should not govern H.R. 1294. Both types of prohibitions against employment discrimination, however, would be contained in Title VII and, as a result, the "de minimus" standard might be applied to cases brought by cancer survivors. An effective legislative effort could confront this possible problem in advance by clarifying the inapplicability of the "de minimus" standard to H.R. 1294.

Recommendation.—All of the aforementioned concerns could be addressed by developing a slightly different legislative strategy. The language contained in section 3(c)(3) could be replaced with a simple and straightforward definition of accommoda-

tion. Section 3(c)(3) could state that "[a]ny employer or covered entity shall make reasonable accommodation to individuals with a cancer history unless the employer or other covered entity can demonstrate that the accommodation would impose an undue hardship." The scope of this duty could be clarified further by listing the previous examples of reasonable accommodation, stating the criteria for undue hardship and disclaiming the applicability of the "de minimus" standard found in religion cases. This clarification could be directly written into section 3(c)(3) and be made a part of the bill's legislative history.

VI. Defenses That Can Be Raised By Employers, Section 4(A) and 4(B)

Section 4(A) and 4(B) discuss the actions that employers can take which, if proved, will excuse them from liability under H.R. 1294. While interrelated to the definitional section, the defenses focus on an employers rightful concerns about the hardships accommodation can cause (section 4(A)) and on problems which stem from employing individuals who are unable to perform job duties in a safe manner (section 4(B)).

A. Essential Job Function.—Both section 4(A) and 4(B) refer to "job requirements." Unquestionably, an employer should not be obligated to hire someone who can not do the job. The issue that arises, however, is how to define job requirements in light of an employer's duty to accommodate. In California, an approach slightly different from H.R. 1294 has been taken.

Instead of analyzing "job requirements" California cases look to an individual's ability to perform the "essential functions of a job." This concept is illustrated by a case where an individual with paralysis of his upper left arm and with a hearing disability applied for a job as a police dispatcher. His inability to change a teletype roll was not seen as an essential job function because others at this work station could load the teletype. In contrast, the requirement of normal hearing was related to an essential job task and thus there was no duty to accommodate.

Recommendation.—Under the current "job requirement" language of 4(A) and 4(B), cancer survivors who could perform all but the inessential job duties might not have any protection. To avoid this situation (and adopt a sensible approach to accommodation, the words "essential job function" could replace the word "job requirement" in sections 4(A) and 4(B).

Section 3(c)(3) and 4(B) overlap on the issue of accommodation in an additional manner. Section 4(B) generally provides an employer can take adverse action against a person with cancer history if the worker can not perform the job safely. Under this section, an employer can justify his or her action on safety grounds "regardless of the availability of accommodation."

This language suggests that an employer need never explore any possibility of accommodation if there are purported safety problems. Thus, even if, for example, a temporary replacement or job restructuring could eliminate any safety hazards, the employer might be under no obligation to seek these accommodations. This anomalous result seems to run contrary to both the stated purposes of H.R. 1294 and the definitional language found in section 3(c)(3).

Recommendation.—There is a clear conflict between the bill's stated purposes and the likely effect of 4(B) as presently constituted. If the concept of reasonable accommodation is to stay intact, the phrase "regardless of the availability of reasonable accommodation should be deleted from section 4(B).

C. Future Risk.—Section 4(B) could also address another situation involving safety issues. Unlike section 4(B), California cases only proscribe adverse action against employees if they are presently unable to perform the job in a safe manner. Thus, employers may not speculate about a future risk which could occur.

This "future risk" doctrine provides essential protections for individuals who, despite their current ability to do the job, are terminated because an employer fears that the employee will be unable to do the job sometime in the future. There are countless numbers of individuals with a cancer history who fall into this category. These qualified cancer survivors, whose economic and emotional survival often depends upon keeping their jobs, may not be protected by the language contained in H.R. 1294.

As written, section 4(B) condones speculation and guesswork about a qualified worker's ability to perform his or her job in the future. If the author of H.R. 1294 wants to guard against this type of conjecture, the words "presently" should be inserted before the phrase "unable to perform . . ." in section 4(B).

D. Burden of Proof.—Finally, language about who must prove defenses in 4(A) and 4(B) is not parallel. While 4(A) provides that the employer must "demonstrate" the defense, 4(B) does not contain the same language. Since under the Rehabilitation Act and the Fair Employment and Housing Act an employer must prove the safety

defense, and omission in 4(B) was probably an oversight. Notwithstanding, failure to establish the employer's burden of proof in 4(B) may establish an unnecessary ambiguity.

Mr. MARTINEZ. Let me announce at this time that all prepared statements will be entered into the record in their entirety and that the witnesses can summarize their testimony. With that, we turn to Mr. Spekter. Did I pronounce that right?

Mr. SPEKTER. You did, Mr. Chairman, thank you.

Mr. Chairman and members of the committee:

Thank you for inviting me to testify today. It is especially meaningful for me to be here, for this filled, brightly lit hearing room in the Capitol is the other side of the universe from the bare dark hospital room where 8 years ago this month a stoic faced doctor presented me with a grim diagnosis of cancer.

Fortunately for me, that initial diagnosis and prognosis was not a death sentence. Revolutionary treatments were being developed and perfected in this country for mine and similar types of cancer in the mid-1970's.

Like the majority of people now treated for Hodgkin's disease, a lymphatic cancer which regularly used to strike down young adults just as they were embarking upon the productive phases of their lives, I have been free of the disease and any type of medication or treatment for many years. Last fall, I passed a Federal Aviation Administration flight physical with flying colors, and I am well on my way to obtaining my private pilot's license.

I have a busy and varied law practice in Washington, DC, am active in community affairs, and like most other people in this town, one of my frequent concerns is that I am working too hard.

Yet, many who have experienced the ordeal of cancer are not as fortunate. Oh, they have made it through the physical aspects of surgery, chemotherapy, and radiation. They have demonstrated in undisputed measures their physical endurance, mental stability and raw courage. Advances in medicine have made them as good as new, yet many are not allowed to pick up their careers, or begin new ones, or obtain jobs commensurate with their abilities, or serve their country in the Armed Forces.

It is not because they don't want to do these things. It is because they are prevented—prevented by prejudice, discrimination, and misconception surrounding cancer, and society's ignorance concerning the real meaning of the medical advances of the last two decades.

I became interested in the employment problems of cancer patients from a legal standpoint after being contacted by Jory Graham, whose nationally syndicated weekly column about coping with cancer, "A Time To Live", was for its tenure during the last few years of her life a beacon to many.

I was referred to the early studies of Dr. Robert McKenna and Dr. Frances Feldman at the University of Southern California. I was astounded that Dr. Feldman had uncovered in her scientific surveys of cancer patients and former cancer patients that at least 17 percent of white collar workers experienced job discrimination and over 40 percent of blue collar workers experienced outright job discrimination, and these are the most conservative figures—and was moved by Dr. McKenna's characterization of a recovered

cancer patient's confrontation with job discrimination as the "final blow."

My interest resulted in what has become for me a second career providing advice and assistance to cancer patients and recovered cancer patients who face employment discrimination.

When I have been able, I have represented individuals in the administrative forums now available to those who experience outright job discrimination. In this capacity I am proud to be a founder and one of the board of directors of One Fourth/The Alliance for Cancer Patients and Their Families, a volunteer organization which is composed of many health care professionals, cancer specialists, and community leaders who are dedicated to fostering understanding of the physical, emotional, social, and financial needs of cancer patients and who seek to work for the rights of all who live with cancer.

In this capacity we have assisted cancer patients by serving as a clearinghouse of sometimes confusing and massive amounts of information. We work in harmony with the American Cancer Society and other groups which strive to educate the public and correct misconceptions concerning individuals with cancer history.

On behalf of the board and members of One Fourth, I am pleased to tell you that we fully support passage of the Cancer Patients Employment Rights Act of 1985.

Employment discrimination against cancer patients and individuals with a cancer history is not imaginary. The early statistics of Dr. McKenna and Dr. Feldman have been repeated throughout the literature on this subject. One of the most recent studies, done by Peter Houts and his colleagues at the Pennsylvania Department of Health indicates, according to Dr. Ivan Barofsky, who will testify here this morning, that there are objective reasons to be concerned that work histories of cancer patients are adversely affected by their illness. Most disturbing are other recent surveys by Jane Tata in Connecticut, Sherry Phillips at the National Institutes of Health, and Grace and Fred Holmes in Kansas, which indicate that childhood cancer survivors are underachieving, and report job discrimination and difficulties in obtaining health and life insurance.

From personal observation in assisting individuals with a cancer history, I state to you unequivocally that passage of H.R. 1294 is needed for a number of very important reasons.

One, cancer patients are surviving in ever larger numbers and, therefore, are becoming a larger part of our work force. American Cancer Society figures show that one out of two individuals with a diagnosis of cancer will be alive in 5 years. According to one recent study, by the year 1990, one in 1,000 individuals reaching the age of 20 will be a cured survivor of childhood cancer and its therapy. As members of the work force, they will add to the vibrancy of their communities, not to mention their contributions to the economy and the tax base.

Two, no current law adequately protects the cancer patient. Frequently, the cancer patient is not handicapped in the traditional sense. In most instances, the Rehabilitation Act of 1973 and 1974 provides for no private right of action, and in all cases limits its coverage to the Federal Government, employees working for Federal contractors, or institutions receiving Federal funds.

In reality, most recovered cancer patients are not handicapped in any definable sense which would place them under the protections of the Rehabilitation Act. Most often, the only handicap they experience is found in the attitude of the employer.

Additionally, from personal experience in dealing with litigation under the act, I can tell you that what was presumably designed to provide a smooth administrative avenue for the handicapped does not really apply to the often more subtle discrimination experienced by the cancer patient.

In one recent case that I have been handling, we filed a complaint with the Department of Labor, Office of Contract Compliance, last November. We have yet to receive an initial investigative determination regarding discrimination.

Given this scenario, it is no wonder that cancer patients vastly underutilize the legal system. Less than 2 percent—in fact, 1.3 percent—of the cases filed under the Rehabilitation Act have been filed by cancer patients. This is significant when one considers the prevalence of cancer in the society at large.

Three, hiring cancer patients and recovered cancer patients makes good business sense. Studies by Metropolitan Life, mentioned by Congressman Biaggi, and also by the American Telephone & Telegraph Company indicate that cancer patients are just as productive as workers without a cancer history. In most instances it is cost effective to retain or hire a person with a cancer history. Additionally, it enhances the morale of an organization when employees know that their employer has a sense of commitment to its workers.

Four, this legislation does not in any way force employers to hire or maintain individuals who simply cannot work. The bill as written sets up commonsense criteria which help in determining whether it is feasible for employers to reasonably accommodate individuals with a cancer history.

The law effectively forbids employment discrimination without forcing undue hardship upon business. It simply seeks to make employment practices more fair as they pertain to individuals with a cancer history. At the same time, it in no way forces businesses to become the sanctuary of individuals who simply can't do the job. Individuals with a cancer history just want to be treated equally—we ask for no more, but we can accept no less.

This legislation represents an opportunity for us all to appreciate in real terms the progress which has been made in the battle against cancer. Quite bluntly, a quarter century ago not enough young people survived Hodgkin's disease or leukemia or bone marrow cancer to warrant any legislation which would protect them from employment discrimination when they entered the work force.

Today the outlook has changed. With this legislation, for the first time, we open a new front in the war against cancer. We are moving from the laboratory of science into the laboratory of society. We are saying that we realize that no longer will the survivors of cancer be content to sit like test tubes on a shelf, merely experiments that have succeeded. We realize that they not only have the right, but they must have our full encouragement, to retake their rightful places among us.

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Eight years ago this month, I sat in that dark hospital room and received a terrifying diagnosis. Yet today, I sit in the light, leading a life full of vibrancy and vigor. My firmest wish is that some day all people who receive that terrifying diagnosis will be able to sit in the light, will be able like me to choose careers and be selected for jobs without any irrational attention being given to their previous history of cancer. This legislation is a most important step in that direction.

Thank you very much.

[The prepared statement of Michael L. Spekter follows:]

PREPARED STATEMENT OF MICHAEL L. SPEKTER, BOARD OF DIRECTORS, ONE FOURTH/THE ALLIANCE FOR CANCER PATIENTS AND THEIR FAMILIES

Mr. Chairman, and members of the committee, thank you for inviting me to testify today. It is especially meaningful to me to be here, for this filled, brightly lit hearing room in the Capitol is the other side of the universe from the bare dark hospital room where eight years ago this month a stoic faced Doctor presented me with a grim diagnosis of cancer.

Fortunately for me, that initial prognosis was not a death sentence. Revolutionary treatments were being developed and perfected in this country for mine and similar types of cancers in the mid-1970's. Like the majority of people now treated for Hodgkins disease, a lymphatic cancer which regularly struck down young adults just as they were embarking upon the productive phases of their lives, I have been free of the disease and any type of medication or treatment for many years. Last fall, I passed a Federal Aviation Administration flight physical with flying colors, and I am well on my way to obtaining my private pilots license. I have a busy and varied law practice in Washington, D.C., am active in community affairs, and like most other people in this town, one of my frequent concerns is that I am working too hard.

Yet many who have experienced the ordeal of cancer are not as fortunate. Oh, they have made it through the physical aspects of surgery, chemotherapy and radiation. They have demonstrated in undisputed measure their physical endurance, mental stability and raw courage. Advances in medicine have made them as good as new, yet many are not allowed to pick up their careers, or begin new ones, or obtain jobs commensurate with their abilities, or serve their country in the armed forces. It is not because they don't want to do these things. It is because they are prevented—prevented by prejudice, discrimination and misconception surrounding cancer, and society's ignorance concerning the real meaning of the medical advances of the last two decades.

I became interested in the employment of cancer patients from a legal standpoint after being contacted by Jory Graham, whose nationally syndicated weekly column about coping with cancer, "A Time To Live", was for its tenure during the last few years of her life a beacon to many. I was referred to the early studies of Dr. Robert McKenna and Dr. Frances Feldman at the University of Southern California. I was astounded that Dr. Feldman had uncovered in her scientific surveys of cancer patients and former cancer patients that 17% of white collar workers experienced job discrimination and nearly 40% of blue collar workers experienced job discrimination, and was moved by Dr. McKenna's characterization of a recovered cancer patient's confrontation with job discrimination as "a final blow".

My interest resulted in what has become for me a second career providing advice and assistance to cancer patients and recovered cancer patients who face employment discrimination. When I have been able, I have represented individuals in the administrative forums now available to those who experience outright job discrimination. In this capacity I am proud to be one of the founders and member of the Board of Directors of One Fourth The Alliance for Cancer Patients and Their Families, a volunteer organization which is composed of many health care professionals, cancer specialists and community leaders who are dedicated to fostering understanding of the physical, emotional, social, and financial needs of cancer patients and who seek to work for the rights of all who live with cancer. In this capacity we have assisted cancer patients by serving as a clearinghouse of sometimes confusing and massive amounts of information. We work in harmony with the American Cancer Society and other groups which strive to educate the public and correct misconceptions concerning individuals with a cancer history. On behalf of the Board

and members, I am pleased to tell you that we fully support passage of the Cancer Patients Employment Rights Act of 1985.

Employment discrimination against cancer patients and individuals with a cancer history is not imaginary. The early statistics of Dr. McKenna and Dr. Feldman have been repeated throughout the literature on this subject. One of the most recent studies, done by Peter Houts and his colleagues at the Pennsylvania Department of Health indicates, according to Dr. Ivan Barofsky of the Institute of Social Oncology, that there are objective reasons to be concerned that work histories of cancer patients are adversely affected by their illness. Most disturbing are other recent surveys by Jane Tata in Connecticut, S. Phillips at the National Institutes of Health and Grace and Fred Holmes in Kansas indicate that childhood cancer survivors are underachieving, and report job discrimination and difficulties in obtaining health and life insurance.

From personal observation in assisting individuals with a cancer history, I state to you unequivocally that passage of H.R. 1294 is needed for number of very important reasons:

One: Cancer patients are surviving in ever larger numbers and therefore are becoming a larger part of our workforce. American Cancer Society figures show that one out of two individuals with a diagnosis of cancer will be alive in five years. According to one recent study, by the year 1990, one out of every one-thousand individuals reaching the age of 20 will be a cured survivor of childhood cancer and its therapy. We need these individuals as fully integrated members of our society. As members of the workforce they will add to the vibrancy of their communities, not to mention their contributions to the economy and the tax base.

Two: No current law adequately protects the cancer patient. Frequently, the cancer patient is not "handicapped" in the traditional sense. In most instances, the Rehabilitation Act of 1973 provides for no private right of action, and in all cases limits its coverage to the federal government, employees working for federal contractors, or institutions receiving federal funds. In reality, most recovered Cancer patients are not handicapped in any definable sense which would place them under the protections of the Rehabilitation Act. Most often, the only handicap they experience is found in the attitude of the employer. Additionally, from personal experience in dealing with litigation under the Act, I can tell you that what was presumably designed to provide a smooth administrative avenue for the handicapped does not really apply to the often more subtle discrimination experienced by the cancer patient. In one recent case that I have been handling, we filed a complaint with the Department of Labor last November, we have yet to receive an initial investigative determination regarding discrimination.

Given this scenario, it is no wonder that cancer patients vastly underutilize the legal system. Less than 2 percent of the cases filed under the Rehabilitation Act have been filed by cancer patients. This is significant when one considers the prevalence of cancer in the soviety at large.

Three: Hiring cancer patients and recovered cancer patients makes good business sense. Studies by Metropolitan Life and American Telephone and Telegraph indicate that cancer patients are just as productive as workers without a cancer history. In most instances it is cost effective to retain or hire a person with a cancer history. Additionally, it enhances the morale of an organization when employees know that their employer has a sense of commitment to its workers.

Four: This legislation does not in any way force employers to hire or maintain individuals who simply cannot work. The bill as written sets up common sense criteria which help in determining whether it is feasible for employers to reasonably accommodate individuals with a cancer history. The law effectively forbids employment discrimination without forcing undue hardship upon business. It simply seeks to make employment practices more fair as they pertain to individuals with a cancer history. At the same time it in no way forces businesses to become the sanctuary of individuals who simply can't do the job. Individuals with a cancer history just want to be treated equally—we ask for no more, but can accept no less.

This legislation represents an opportunity for us all to appreciate in real terms the progress which has been made in the battle against Cancer. Quite bluntly, a quarter century ago not enough young people survived Hodgkins disease or leukemia or bone cancer to warrant any legislation which would protect them from employment discrimination when they entered the workplace.

Today the outlook has changed. With this legislation, for the first time, we open a new front in the war against cancer. We are moving from the laboratory of science into the laboratory of society. We are saying that we realize that no longer will the survivors of cancer be content to sit like test tubes on a shelf, merely experiments

that have succeeded. We realize that they not only have the right, but they must have our full encouragement, to retake their rightful places among us.

Eight years ago this month I sat in that dark hospital room and received a terrifying diagnosis. Yet today, I sit in the light, leading a life full of vibrancy and vigor. My firmest wish is that someday all people who receive that terifying diagnosis will be able to sit in the light, will be able like me to choose careers and be selected for jobs without any irrational attention being given to their previous history of cancer. This legislation is a most important step in that direction.

That concludes my formal remarks. I will be pleased to answer any questions the committee may have.

Mr. MARTINEZ. Thank you, Mr. Spekter.

I am going to have to apologize to the panel, but we are going to have to leave for 10 minutes to make a vote. I would hope you would stay where you are. We will have questions when we return.

Mr. BIAGGI. Don't leave town.

Mr. MARTINEZ. Don't leave town.

[Recess.]

Mr. MARTINEZ. We are going to proceed with the hearing.

Dr. McKenna, as you were testifying, something came to mind when you spoke of the fear of some of the employers. One of the big fears that I think entered into some of the employers' minds is their liability with these patients.

Are they covered by insurance already when they initially go in? So, there really is no liability to the employer? Or even if they go back on the job, is there any extra liability to the employer?

Dr. MCKENNA. Not really. The issue of health insurance is intermingled with this employment problem. The liability to the employer is overstated by a factor of at least a thousand times what it really is. Cancer is not different than heart disease, or diabetes, or a fractured femur, or any other illness. Most companies carry group health insurance, and their employees get adequate medical care.

The cancer concept is that this is a disease which is fatal, which is not the truth. The concept that the disease will recur and require repeated medical expenses, constant time off from work, a lot of need to retrain and substitute people, is not based on statistics, it is not based on facts. It is on fear, phobias that have persisted in the work force. Most of this is because nonmedical people make decisions about personnel policy based on concepts of 30 and 40 years ago that cancer was always fatal. It is time that the employer learn the real truth about cancer. Cancer is singled out from all the other diseases. Most people are very optimistic about heart disease. So, you have a heart attack, you get good treatment. You either win or lose, but you go back to work. You never think you could get another heart attack, which a significant number of people do. You know, none of us are perfect. We all have disabilities, if you want to call it. But I don't look at cancer as a disability.

I think it is the psychological, the social, the economic aspects, the impact—No. 1, having a disease that could be fatal, and, No. 2, being treated as someone different. That's our major concern. A cancer patient should not be treated differently than any other individual in this country.

Mr. MARTINEZ. I agree with you. I smiled when you spoke of a heart patient. I had a triple bypass just about 2 years ago. I don't feel like I was ever ill. I don't think it has restricted me in any way

in my job. But you are right; there is a potential for another heart attack. If people were going to discriminate against anyone, you might think they would discriminate against the ex-heart patient.

Dr. MCKENNA. They rarely do, though. But they very frequently do against cancer. That's why all this legislation is important. That's why this disease is singled out from all the other diseases.

Mr. MARTINEZ. The other thing is, I doubt very much that unless I told you, you wouldn't know by looking at me that I had a triple bypass.

That leads me to the next question I was going to ask you and you have partially answered it already—is the other fear that employers have the additional cost to them. Isn't there an additional cost to them in terms of time laid off and retraining of new personnel, et cetera?

Dr. MCKENNA. You have got to realize that some people come in with advanced cancer and incurable. I know you are aware that tobacco is our No. 1 public health hazard. We would have 300,000 less deaths in this country every year if we didn't have the weed around. That is where the bulk of our medical expense in cancer is. That's why the figures are only 51 percent because tobacco causes a lot of cancer—it is not just lung, it's the esophagus, it's oral cancer, larynx, and so forth. So, if we are concerned about economics, if we could get rid of that one problem, we would have 75 percent cure rates today.

We are working on that problem. We are trying to educate the public, but it is a tough one.

Mr. MARTINEZ. Mr. Spekter, you are an attorney. Can you define what reasonable accommodation means under this bill, and how does it comport with the current title VII definition of reasonable accommodation?

Mr. SPEKTER. Under the bill as it is presented now, several criteria set for which take into consideration the size of the business, the types of accommodations that would have to be made for cancer patients, or recovered cancer patients, as determinations as to whether their accommodation is reasonable or not.

It is usually a case-by-case subjective decision. I think the bill very wisely as it is written, and as I stated in my statement, sets forth that we are basically going to look at each case on a case-by-case basis, make it an equal, rather than something that the cancer patients are given outright favoritism for. That's not what they are seeking.

Mr. BIAGGI. Will the chairman yield on that point?

Mr. MARTINEZ. Yes.

Mr. BIAGGI. I would like to cite an example. I have a district office, as we all do, which the chairman is aware of—I think we have about nine employees. My chief staff person is a woman who was a victim of cancer. After she had surgery completed, she returned and her work was on the same excellent level that it always had been, and the vigor was undiminished. That goes back about 6 years now, or 7. We have no problem, nor do any other members of the staff have any problems. I think that's the important thing. Everyone was sympathetic. The sympathy didn't last very long because in a couple of months they were at each other again as they usually are. I think that is a healthy attitude.

The size of the company—of course, the larger the company, the easier it is to accommodate. Sometimes you have a small number of personnel and it may pose a problem, if that person is not up to staff physical standard. We are not talking about that.

We are talking about someone who is up to standard and who is cured, so there is no reason why that person shouldn't be treated in the same fashion as any other employee. But there are some employers who are victims of misinformation, and lack of education of the facts. This legislation hopes to deal with two phases: educate—and when they fail to be educated in force, we prefer the former procedure. And I think once as a consciousness developed on a universal basis, that the enforcement will probably never be required.

Mr. SPEETER. Also, Mr. Biaggi, the combination spoken of is basically tied in with the fact of whether the person can complete or take care of their job. With many cancer patients, you don't really need any physical type of accommodation. Usually these people aren't handicapped in any real traditional sense. You don't need wheelchair ramps, you don't need special auditory or items in braille, whatever. You don't really need a lot of those things.

Mr. MARTINEZ. They are no different than any of the accommodations that you would make normally when trying to live a successful life, right?

Mr. SPEETER. Right.

Dr. MCKENNA. Mr. Chairman.

Mr. MARTINEZ. Yes, sir.

Dr. MCKENNA. The Legal Aid Society of San Francisco has the attached brief that I submitted to you, and on page 10, it defines accommodation as any employer or covered entity shall make reasonable accommodation to individuals with a cancer history unless the employer or other covered entity can demonstrate that the accommodation would impose an undue hardship. We don't think it has to be that complicated.

One other thing. We aren't talking about always cured patients that we are dealing. No one knows if you are cured for years. We are talking about the people who have recovered from cancer who are work-able. I think it is wrong to restrict any legislation to say you are cured of cancer before this law or bill will protect you. That's an out that the employer has. None of us know that we are cured of this, that, or other things. But we know the statistics of 100 people with the same illness.

Mr. MARTINEZ. I think that you just hit on something in the undue hardship aspect of this. Would either one of you, or both of you, describe undue hardship as far as the employer is concerned?

Dr. MCKENNA. I will give you an example of a male who was in the construction business who lost a leg in amputation due to cancer. If he was climbing the girders on a skyscraper, he has got no business up there with one leg, and he needs to be accommodated to do a job on the ground. To me, a large employer can normally shift such a person to a job that he can handle.

A person who has a laryngotomy, maybe a commercial fisherman, he really shouldn't be out on that boat in case he falls overboard because he could drown where the rest of us could swim without having the water enter our lungs. He needs to be accommodated for.

The person that has only one eye, where an eye has been removed for cancer. If he needs binocular vision, this person should be accommodated into a position where it is not essential that you have two eyes.

But I assure you that the lady that has only one breast and teaches school doesn't have to be accommodated for. And the man that has had a colonal section and a foot of his intestine removed does not need special attention at work. That's the case for the majority of people who have had cancer.

The trouble is, cancer is not one disease. You have got to realize it hits many, many sites. It behaves in very different ways.

We have another issue here that has not been brought up, and that is the patient with a precancerous condition, an in situ cancer. This is the commonest situation in the uterine cervix, the mouth of the womb. These people are discriminated against not because they had cancer, but because they have a label that sounds like cancer. In situ carcinoma with 100 percent cure rate—I have seen people turned down from the Peace Corps, from applications for all kinds of employment because of this advance in medical technology. We didn't know this disease 30 years ago, but we have developed Pap's smears which detect a precancerous lesion, and we have these now in the breasts. Somewhere between 3 and 5 percent of all breast cancers are in situ, 100 percent curable because they are local and not invasive, they have not yet become cancerous. But the personnel people don't understand it.

Mr. MARTINEZ. So it is a matter of education?

Dr. MCKENNA. A major problem. We think legislation is important, but hand-in-hand goes with education. We are really going to put our effort into this in American Cancer Society.

Mr. MARTINEZ. Thank you. My assistant here has handed me a note, my 5 minutes is up, he says.

At this time let me alert the committee we will be under the 5-minute rule for questioning of the witnesses.

Let me take this opportunity to introduce the ranking minority member of the committee, Steve Gunderson. Mr. Gunderson, do you have an opening statement you would like to make?

Mr. GUNDERSON. No; I apologize for being late, Mr. Chairman. I have an opening statement I would just like to make a part of the record rather than take time to recite it at this time, if that's all right.

Mr. MARTINEZ. With no objection, so ordered.

[The prepared statement of Hon. Steve Gunderson follows:]

PREPARED STATEMENT OF HON. STEVE GUNDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Good morning. I am pleased to be here today to consider a very important matter before our subcommittee—that of civil rights as they apply to employment practices for the handicapped and those with a cancer history. I commend the chairman of the subcommittee, Mr. Martinez, for calling this morning's hearing, demonstrating his recognition of the significance of this issue. I also commend Representatives Moakley and Biaggi for their sponsorship of H.R. 370 and H.R. 1294 respectively.

H.R. 370 and H.R. 1294 would expand the coverage of title VII of the Civil Rights Act of 1964. H.R. 370 would amend title VII to make discrimination against handicapped persons an unlawful employment practice, while H.R. 1294 would amend title VII to prohibit employment discrimination on the basis of a history of cancer.

Title VII of the Civil Rights Act of 1964, as amended, basically makes it unlawful for employers, employment agencies, and labor organizations to discriminate against employees, applicants or members on the basis of race, color, religion, sex, or national origin. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against an otherwise qualified handicapped person solely by reason of handicap in any program or activity that receives Federal financial assistance and in executive agencies and the United States Postal Service.

Although both title VII and section 504 prohibit employment discrimination, there are several significant differences between the two statutes—the primary difference being that while section 504 does prohibit discrimination in employment practices for the handicapped, it only applies to programs or activities receiving Federal funds or government agencies. Because under current law, the handicapped are not included in the list of those individuals covered by title VII of the Civil Rights Act of 1964, the handicapped are not protected against discriminatory employment practices in the private sector—with private employers not receiving Federal funding.

With the exception of few individuals with a history of having or having had cancer being covered under Sections 503 and 504 of the Rehabilitation Act, those with a cancer history have no Federal statutory protection from discriminatory employment practices. With the increasing number of persons diagnosed as having cancer each year, this discriminatory action is touching more and more lives daily. Many employers are reluctant to hire cancer patients for many reasons, some of which are simple misunderstandings. Commonly accepted myths, such as that cancer is contagious and that all cancer patients will die of their disease, are at the root of much of the prejudice against people with a cancer history. But employers also fear putting a cancer patient back on the payroll for a dollars-and-cents reason. They fear that in the event of a relapse, an employee with cancer could run up huge medical bills, driving up the company's health-insurance premiums. They fear that absenteeism and reduced capacity to work regular hours will reduce efficiency. However, in most cases where the person with a cancer history can return to work, these fears do not hold true.

Both H.R. 370 and H.R. 1294 would provide for the inclusion of handicapped individuals in the list of those covered under title VII of the Civil Rights Act, thus providing, for the first time in many cases, a Federal protection against discrimination in employment procedures for these people.

It is vital that these citizens be allowed to work and to contribute to society. These two bills would require that handicapped individuals and those people with cancer histories be judged and hired solely on the basis of their vocational skills—nothing more, nothing less—an employment practice that is certainly a long time coming.

I look forward to hearing the testimony of our distinguished witnesses today, as they provide us with information as to how these bills would affect their lives and/or the lives of so many talented individuals, who are waiting for opportunities to prove themselves in the workplace.

Mr. MARTINEZ. Do you have questions at this time?

Mr. GUNDERSON. Yes, I do. I would like to begin with a question on how many States presently have laws prohibiting discrimination?

Mr. SPEKTER. Our latest information is 45.

Mr. GUNDERSON. Forty-five of the 50 States.

That brings up a question, then, of why ought the Federal Government do it if the States are doing it on their own?

Mr. SPEKTER. Many of those laws, they simply mention cancer, they don't provide for uniform or appropriate assistance to cancer patients, victims, and people who have been cured of cancer. Many of them provide for very cumbersome and different forms of administrative hearings which can tie up individuals for quite a long time and not be really effective.

I believe that the main purpose of this legislation is to set forth something that will be fair and will also be national in origin.

Mr. GUNDERSON. Would this supersede all State law, or would this apply only where State law does not? How would it work?

Mr. SPEKTER. As the system seems to work now for the States that do have laws where you have a choice of forum in some instances—you can take it to the Department of Labor or the 503 violations under certain circumstances, or you could go to the State laws, utilize the State laws.

Mr. GUNDERSON. I think we are going to get into a real debate on this issue probably on the floor. It is the kind of thing people are going to stand up and say, look, the States are already doing it. How are you going to respond? If either of you could provide us with an analysis of State law and how they are handling it as to is their inconsistency which calls for the Federal intervention. Is there an adequate State law on which we might base the Federal law?

My heart is clearly in the right place in this issue. I am with you as long as we can deal with some of the legal and technical concerns.

Mr. SPEKTER. Just as an example, Mr. Gunderson, in California, which has a very good law which protects discrimination against cancer patients, they have found out—and I believe the Legal Aid Society in their submission stated that fully 10 percent of the discrimination complaints filed in California deal with cancer complaints. When you consider that the Federal system right now has about 2 percent with the prevalence of cancer in society, I believe that it shows that the current Federal law isn't really adequate to handle the situation.

Mr. GUNDERSON. It is interesting. I haven't completed reading through this San Francisco Legal Aid Society review. Did they discuss at all the issue of whether we need both concurrent State and Federal legislation on the issue? How would this interface with the State law?

Dr. MCKENNA. They don't discuss that issue but they do strongly support a Federal law. I am not a lawyer so I shouldn't be talking.

Mr. GUNDERSON. That makes two of us.

Dr. MCKENNA. The issue is a national one and not a State one, in my opinion. Why do we have a Civil Rights law? Isn't it a national issue?

I think this California law, from what I am told, is a good law but it has a lot of loopholes and cracks, and it really doesn't help everyone who has this problem. To me it's an issue that crosses all boundaries, crosses all ages, sex, racial things, religious things, and I think it is just as essential that this be included in the Civil Rights law.

Mr. GUNDERSON. I hear what you are saying. I just want to share with you as a positive constructive criticism that there are many people in this Congress, especially many people from my political party in this Congress, who tend to believe that States ought to do things first and Federal Government gets involved only if States are reneging on that role.

I think in order to make this argument on the floor, we are going to have to get some information for this subcommittee as to the problems with the States doing it and why there is a role for the Federal Government which is justified. If one Member gets up and says 45 of the 50 States already have laws, we ought not be in this business——

Mr. BIAGGI. Will the gentleman yield on that point?

Mr. GUNDERSON. Sure.

Mr. BIAGGI. I think it is very important that you raise the question. There is some confusion here. I am advised that we only have two States specific that has specific prohibition against discrimination against cancer, and that's California and Vermont. The other States deal with general discrimination based on handicapped. I am going through a whole series of them. Not one of them mentions cancer.

Mr. GUNDERSON. OK.

Mr. BIAGGI. Then we talk about disability—there's a misconception. A cancer victim, a person with a history of cancer, is not considered disabled or handicapped. There have been applications for disability benefits that have repeatedly been denied as contrasted to those who might be blind or otherwise physically disabled.

The regulations in these various States deal with the blind, visually handicapped, and otherwise physically disabled, physical handicap, visual handicap, hearing impaired, medical condition, handicap, physical, and so on, and so on. There's no reference made to those persons who have a history of cancer.

Dr. MCKENNA. This is the same problem in the California law. It assumes that a cancer patient is disabled, and that's a strong issue that we want to emphasize. We are not talking about disability, we are talking about a bias, really, a discriminatory approach or attitude towards the patient just because of that word cancer.

Mr. BIAGGI. The people we are addressing are those who have recovered if not cured. As Dr. McKenna says, we never know when we are completely cured, of any ailment. But they run into substantial numbers. They range anywhere from one million on. That number is only going to increase over the years given the remarkable breakthroughs we have medically. That's why we single this out as distinguishing it from Mr. Moakley's bill who deals with the handicapped. That's another problem.

Mr. GUNDERSON. Sure. My time is up, the chairman has already indicated to me. But perhaps your organizations and, Mr. Biaggi, your staff, can work with mine between now and markup here in full committee and on the floor to clarify this issue and get the necessary support of documentation because it is going to be an issue.

Mr. BIAGGI. No question.

Mr. GUNDERSON. Thank you.

Mr. BIAGGI. Thank you.

Mr. MARTINEZ. With that, the time of the gentleman is up.

Mr. Atkins, do you have any questions?

Mr. ATKINS. Mr. McKenna, you say in your statement the Armed Forces and some governmental agencies are still using discriminatory employment practices while there has been significant improvement since 1974 in industry.

Could you elaborate on that, on the discriminatory employment practices in the Federal Government and also any that you are aware of in State governments or local governments?

Dr. MCKENNA. To my knowledge, there is no one who has had cancer that can enlist in the Armed Forces. There has only been one person who has ever graduated from Annapolis who had cancer, and that's Tom Harper, who recently wrote a book. They

nearly threw him out during his treatment. Anybody else has been put out of the service.

Mr. BIAGGI. Will the gentleman yield on that point?

Mr. ATKINS. Yes, I yield.

Mr. BIAGGI. The military regulations specifically prohibit recruitment of anyone with a history of cancer.

Dr. MCKENNA. I had a patient a few years ago who was in the Armed Forces 30 years, had a colon cancer 27 years after being in the service; passed the Civil Service exam in one of our counties in southern California, offered the job. They found out he had a colon cancer 3 years ago, turned down.

I have seen this repeatedly with city, county, employees who have applied for jobs. The police authorities—we have one person who has acute leukemia four years ago, unless he told you he had leukemia, you couldn't tell he ever had it—turned down 37 times for jobs, with a master's degree in police science. I think the police are probably the strictest, and this is unfair. The same is true of firemen, the same is true of many, many occupations without any cause and relationships for reasons to turn them down because of a past history of cancer.

I think you will find this is a valid statement. It's a strong critic of the employment policies. But it stems from a long history of creating a personnel policy stating that anyone with a tumor or cancer, and people that have even had benign tumors, are not eligible for employment in many Civil Service jobs or in Federal, State, county, or city jobs.

Mr. ATKINS. Has the American Cancer Society undergone any kind of a program to just catalog those areas where there's clearly standards or regulations prohibiting the employment of cancer patients or former cancer patients in the public sector?

Dr. MCKENNA. We have done this in a limited way in the sense that we are hearing it secondhand. You call any of these personnel people and they are very reluctant to tell you their code of ethics and how they operate. But when we do see the printed thing and we see why people are turned down, it is right there in black and white. It exists all over the country, I am ashamed to say.

Mr. ATKINS. It would seem to me that that would be a good place to start for the Government to get its own house in order and for there to be some kind of administrative review through OPM of all of the employment regulations, and that that's something that certainly the Cancer Society could take the lead in in trying to see that that kind of thing doesn't happen.

Dr. MCKENNA. I endorse that.

Mr. ATKINS. Could you also give me a sense as to what the present procedures are when somebody files under the Rehab Act of 1973 for cancer discrimination?

Mr. SPEXTER. It would seem to me that would be a good place to start, for the Government to get its own house in order, and for there to be some kind of administrative review through OPM of all of the employment regulations, and that that is something that certainly the Cancer Society could take the lead in trying to see that that kind of thing——

Mr. ATKINS. Could you also give me a sense of what the present procedures are when somebody files under the Rehab Act of 1973 for a cancer discrimination?

Mr. SPEXTER. I am working on a case right now that involves that. What you do is file a complaint with the—if it is an issue that involves a Federal contractor, and they must initially have a business with the Federal Government in excess of $2,500, you file a complaint with the Office of Contract Compliance of the Department of Labor.

They then are commissioned to do an onsite investigation and make a determination—supposedly, according to their internal regulations, from what I understand, within 30 to 60 days.

They also try to informally settle the matter. And then when they come back with that determination, you can take it to an administrative hearing if the determination is not favorable to the cancer patient.

Now, in reality, that is how, technically, things are supposed to work. But, in reality, I don't think they work quite that way. Things get stalled.

In the meantime, the patient, the individual with cancer or cancer histories, in most instances has no private right of action. You can't take it into a court of law. You are basically stuck with waiting until that administrative process is completed.

Mr. ATKINS. Does the California statute provide for a private right of action?

Mr. SPEXTER. I am not familiar with the exact letter of the California statute. I know from talking with some of the other individuals who are going to testify today and from most of the other people that I have talked to, most of the time people are dealing in administrative areas, whereas I believe title VII would give us a private right of action.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. BIAGGI. I would like to pick up on that Rehabilitation Act. There is little refuge from in the Rehabilitation Act of 1973 because you are dealing with the public sector and the area where Federal dollars find their way when you are talking about disabled individuals.

The point here is these people of our concern are not regarded as disabled. We have sufficient precedent and decisions indicating they are not in fact disabled people. So that there is little refuge found in that. That is why we find it necessary to come to this area.

Dr. McKenna, you have made reference to individuals being turned down on the disability application. To whom did they apply, Social Security or some insurance people?

Dr. MCKENNA. Social Security, as far as I know.

Mr. BIAGGI. Because we have cases of that denial. And in the longer statement, the Legal Aid Society of San Francisco has recommended several changes in the legislation, Dr. McKenna, and I know you are familiar with it.

Does the American Cancer Society endorse those recommendations?

Dr. MCKENNA. The American Cancer Society has reviewed these, and believe that they are probably very sound and wise to implement.

I must point out, however, we are not a legal organization. We are a voluntary health organization who are bringing to your attention the problem that exists.

And I think we do need legal input in this area to rationalize and review these recommendations and see if they are appropriate to modifying the bill as it now exists. This is your judgment to make.

Mr. BIAGGI. The Legal Aid Society has endorsed this.

Dr. MCKENNA. Yes.

Mr. BIAGGI. The recommendations they make, then, you assume are constructive.

Dr. MCKENNA. These are constructive suggestions for your consideration.

Mr. BIAGGI. Fine.

Mr. Spekter, what current legal avenues are available and how effective are they? Try to make the answers as short as possible because we have limited time.

Mr. SPEKTER. They aren't very effective.

Mr. MARTINEZ. That is as short as you can get. Is that the answer?

Mr. SPEKTER. That is basically true, sir, especially with the criteria that you have given, that these people are in fact not really disabled in many cases, and therefore there are no laws for them. And that is the bottom line.

Mr. BIAGGI. That has been your experience in work with the Federal agencies in this area, especially the Labor Department, Justice Department, or the EEOC?

Mr. SPEKTER. The Federal agencies, in theory, have some good systems; but in reality, they don't work too well.

Mr. BIAGGI. In your experience in litigation, why are individuals reluctant to undertake legal recourse if they are faced with discrimination?

Mr. SPEKTER. In many cases cancer patients and recovered cancer patients really don't utilize their legal rights at all because the current laws just don't provide any real avenues to them.

Mr. BIAGGI. Or, to put it another way, they don't have any legal rights.

Mr. SPEKTER. That is basically true.

Mr. MARTINEZ. Thank you, Mr. Biaggi.

I would like to thank both of you for coming here today and sharing your expertise with us. It will go a long way in helping us in our deliberations.

Thank you very much.

Dr. MCKENNA. Thank you.

Mr. MARTINEZ. Our next panel consists of Mr. Anthony Igneri, a police officer, New York City Police Department; Virginia Austin, Parlier, CA—I'm from California, but I never heard of Parlier. Where is that?

Mrs. AUSTIN. About 20 miles south of Fresno.

Mr. MARTINEZ. And Dr. Ivan Barofsky, Institute of Social Oncology, Silver Spring, MD.

Welcome.
We will have Mr. Igneri begin.

STATEMENT OF ANTHONY IGNERI, POLICE OFFICER, NEW YORK CITY POLICE DEPARTMENT; VIRGINIA AUSTIN; AND DR. IVAN BAROFSKY, INSTITUTE OF SOCIAL ONCOLOGY

Mr. IGNERI. Mr. Chairman and members of this committee, my name is Anthony Igneri and I am from Wantagh, NY. I have come here today to tell you of my struggles to become a New York City police officer.

In May 1979, at the age of 21, I was diagnosed as having Hodgkin's disease, stage 2A. At the time of my diagnosis, I was devastated.

I was treated for 7 months as an outpatient at Memorial Sloan Kettering Institute in New York. My treatments consisted of combined chemotherapy and radiation. Since March 1980, I have received no further treatments and had no reoccurrence of my illness. According to my doctors, I am cured.

One month after being diagnosed, I took the New York City police test. I had always wanted to be a police officer and was excited that the prospect of becoming an officer seemed so close at hand. Doubtless to say, I was very wrong. In March 1981, I also took the New York City transit police test.

After taking a qualifying medical exam in 1981 for the New York City Police Department, I was rejected on the basis of having a history Hodgkin's disease. I was told to come back in 2 weeks to the Candidates Review Section.

Once again, I was found not qualified based on a medical standard, No. 69, which states, "Tumor: Presence of or significant history of malignant tumor—rejects." Once again, I was devastated as I felt as if I was fighting cancer all over again.

Within the next 30 days, the rejection decision was appealed to the Department of Personnel Joint Medical Review Board. They found that Hodgkin's disease is not a suitable precondition for a stressful life and that this condition could be detrimental to the candidate, and there is a possibility of reoccurrence.

After I was rejected by the Department of Personnel, I became even more determined to become a police officer. I filed a complaint with the New York State Human Rights Commission.

At the same time, a final appeal was made to the city Civil Service Commission. In September 1982, after a year and a half of appeals using this particular process, the Department of Personnel's decision "not qualified" was reaffirmed.

I am thrilled to tell you that in June 1983, I graduated from the New York City Police Academy as a New York City Transit police officer—not a New York City police officer, but a closer step to achieving that goal. It was a proud moment for me and only reaffirmed in my own mind my ability to effectively perform the job as a police officer.

The legal process was a long and hard road. After almost 3½ years, a Human Rights Commission attorney and myself sat down to negotiate with a city council attorney representing the city of

New York Police Department and the Department of Personnel. A compromise was reached.

I am to be sworn in the next class as a city police officer. I will receive back seniority for as long as I have been a transit police officer. I will be subject again to the same screening processes as a new applicant. Once fully a member of the Department, I will have to go through another year's probation.

I settled for these terms. I settled for the compromise.

The reason is simple: I didn't want to have to wait another 3½ years for a decision granting me more favorable conditions. It was a long, hard road to get where I was and I didn't want to make it any longer.

I had already proven to myself that I could do the job. The problem was convincing the city of New York to grant me the opportunity.

I had won the battle against cancer. Little did I know that I would be fighting the ignorance and prejudice of many people for a long time to come.

I sincerely believe that a person should never be denied an opportunity based on his history; instead, he should be given a chance for his future.

Please work to pass this bill. You will be providing equal opportunity for millions of others like myself.

[The prepared statement of Anthony Igneri follows:]

PREPARED STATEMENT OF ANTHONY IGNERI, NEW YORK CITY POLICE OFFICER

Mr. Chairman and members of this subcommittee, my name is Anthony Igneri and I am from Wantagh, NY. I have come here today to tell you of my struggle to become a New York City Police officer.

In May 1979, at the age of 21, I was diagnosed as having Hodgkin's disease, stage 2A. At the time of my diagnosis, I was devastated. After being treated for 7 months at the Memorial Sloan Kettering Center in New York—my treatments consisted of combined chemotherapy and radiation—I was released. Since March 1980, I have received no further treatments and have had no reoccurrence of my illness. According to my doctors, I am cured.

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After taking the qualifying medical exam in 1981 for the New York City Police Department, I was rejected for having a history of Hodgkin's disease. I was told to come back in 2 weeks to the candidates review section. Once again, I was found not qualified based on medical standards No. 69—"Tumor, presence of or significant history of malignant tumor—reject." Once again, I was devastated. I felt as if I was fighting the cancer all over again.

Within the next 30 days, the rejection decision was appealed to the Department of Personnel Joint Medical Review Board. They found: "Hodgkin's disease is not a suitable precondition for a stressful life and that this condition could be detrimental to the candidate. And, there is a possibility of reoccurence."

After I was rejected by the Department of Personnel, I became even more determined to become a police officer. I filed a complaint with the New York State Human Rights Commission. At the same time, a final appeal was made to the city civil service commission. In September 1982, after a year and a half of appeals using this particular process, the Department of Personnel's decision "NOT QUALIFIED" was reaffirmed.

I am thrilled to tell you that in June 1983, I graduated from the New York City Police Academy as a New York City Police transit officer—not a New York City police officer, but a closer step to achieving that goal. It was a proud moment for me and only reaffirmed in my own mind my ability to effectively perform the job of police officer.

The legal process was a long and arduous road. After almost 3½ years, a Human Rights Commission attorney and myself, sat down to negotiate with a city council attorney representing the New York City Police Department and the Department of Personnel. A compromise was reached—I am to be sworn in the next class as a city police officer. I will receive back seniority for as long as I have been a transit police officer. I will be subject again to the same screening processes as a new applicant. Once fully a member of the department, I will have to go through a year's probation.

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I had already proven to myself that I could do the job. The problem was convincing the city of New York to even grant me the opportunity. I had won the battle cancer. Little did I know that I would be fighting the ignorance and prejudice of many people for a long time to come. I sincerely believe that a person should never be denied an opportunity based on his history. Instead, he should be given a chance for his future. Please work to pass this bill—you will be providing equal opportunity for millions of others like me.

Mr. MARTINEZ. Before I go on to the next witness, you know, you move me to relate to you something, because your testimony is quite moving, of an incident in my personal life.

The circumstance relates to a very close friend who has since passed away. He was the former chief of police of Monterey Park, Ray Warner. He was half an inch too short, and he got himself stretched to become a part of the police department, because he had been turned down several times.

He went on through great adversity to get an education and become police chief. He became one of the most revered police chiefs in the history of California.

Not only that—the testimony to this is the fact that at his funeral, there were over 6,000 people. So he really had accomplished something.

And I think people that go through that kind of adversity and accomplish something like that should be commended.

Thank you.

Mr. IGNERI. Thank you.

Mr. MARTINEZ. At this time we will take the testimony of our second witness.

You may proceed.

Mrs. PARLIER. Mr. Chairman and members of the subcommittee, my name is Virginia C. Austin from Kingsburg, CA.

This is my first visit to Washington, DC, and I am thrilled to be here in our Nation's Capitol. But my excitement is somewhat subdued because of what I have come here to tell you this morning.

I was born and raised in the State of Arkansas, where I met and married my husband. In 1941, we left our native State and moved to sunny California, the land of golden opportunity. I raised a daughter and spent the 1940's and 1950's as a homemaker.

In 1957, following my divorce, I was the sole supporter of my daughter. I started working as a receptionist at Kingsburg Cotton Oil Co. The company processed cotton seed to remove the oil, which was then sold in bulk form for manufacturing into vegetable oil. The remaining shells were made into meal for cattle feed.

I started out at $225 a month, worked a basic 8:30 to 5, and would go home each night to my daughter.

Life in California, as you know, Mr. Chairman, is heaven. Despite the fact that I worked long hours and raised my daughter alone, we still felt that we had a little piece of Eden and we loved life with all the gusto that we could muster. Life passed for us both with all the joys and heartaches that are associated with everyday life.

Late in 1974, after 18 years with the company, I was promoted to a sales representative. I received a nice pay raise and can say that I really loved my new position.

In July 1975, my idealistic life in the Golden State began to unravel when I was diagnosed as having colon cancer. Doctors removed about 18 inches of my colon. I was absent from my job about 7 weeks during that period, 5 weeks of which the company paid sick leave and the other 2 weeks I used vacation time.

Mr. Chairman, I might note that the one bright spot in my life during this period was that I met and married a wonderful man. Without him, I would not have made it through my battle with cancer.

In December 1976, doctors discovered that I had a metatasis on the ovary. I had a hysterectomy, followed by chemotherapy.

My treatment involved going to chemo for 1 full week every 6 weeks. After the Monday treatment at 9 a.m., I went home to bed very ill. Tuesday through Friday I had my treatment at 9, and was back in the office at 9:45 a.m.

At the time my doctors warned me that the treatment I was receiving might not cure my cancer but certainly would prolong my life. I had a 20–25 percent chance of survival. You can all note that I was told this almost ten years ago and I am here in Washington, DC, today to tell you about it.

Following this incidence of cancer, my boss, Mr. Davis, said that I would be docked for days that I had to take off. I discovered that the company policy regarding sick leave for management staff was unwritten and was given to the discretion of the supervisor.

Mr. Davis concluded that even after 20 years of working for the same company, I was no longer eligible for paid sick leave. From then on it was clear that any future sick days taken would be deducted from my paycheck, no questions asked.

During this period, I had routine tests conducted that I always scheduled in the morning before work; when able, I was always back in the office right after completion of the doctor's visits.

I had no major problems to speak of through 1978 and 1979. In 1979, I had 1 day off because of illness.

In September 1980, I contacted pneumonia. I stayed home in bed against the doctor's advice, who recommended hospitalization.

I was absent from work for 12 days, unpaid, of course. I returned to work in October, and in early December, I entered the hospital for 7 days for tests to determine the cause of a chronic diarrhea.

On the first working day after Christmas, December 29, 1980, I returned to work. I was at my desk talking to a customer about a sales order when Mr. Davis asked to see me in his office. He closed the door and asked me to sit down and told me he thought I should retire.

When I told him that I needed my job, he said, "Either you retire or I'll fire you." Then he said, "You can tell people that you re-

tired." And I told him that I wouldn't lie about it, that I would tell them what happened, and it would be because I was fired.

I also told him that at my age, then 57, I would not be able to find another job, and his response was that, "Well, let your husband take care of you."

Mr. Chairman, I was completely shocked by Mr. Davis' action. All during my treatment period—1957 to 1980—I had kept Mr. Davis fully informed of what was happening, as well as the prognosis of my recovery. He never once mentioned, ever, that I was in jeopardy of losing my job.

I would also like to take note that prior to my cancer diagnosis, from the first day of employment in 1957 up to 1975, I only took off 2½ weeks due to sickness.

You might be interested to know that in 1979, this same man, Mr. Davis, who fired me because of what he characterized as my cancer-related absence, was on a paid sick leave for 8 months due to an accident. After he returned to work, it was only on a part-time basis and yet he still received his full pay and yearly bonuses.

Mr. Chairman and members of the subcommittee, I worked for this company for 23 years. I believe that I was a hard-working, dedicated employee who believed in the concept of a day's work for a day's pay.

As I mentioned earlier, I was promoted in 1974, and during the course of my 23 years of employment, I regularly received pay raises. My final salary upon leaving the company was approximately $1,400 a month.

Following my discussion with Mr. Davis, I left his office, went home, locked the doors and cried. In my despair, I screamed at God and took back the prayers I said for Mr. Davis' recovery after his accident. And being a Christian, I knew these terrible feelings were wrong.

In the months that followed my termination, it heightened my feelings of helplessness. Having thought I had beaten an enemy called cancer, I discovered that I was still fighting a battle against ignorance and misinformation regarding my illness and how cancer had an impact on my ability to continue working.

I applied for disability insurance and received them through May 1981. During this time, I hadn't taken any action against my former employers because I was trying to block out the terrible experience from my mind.

A friend told me that I should talk to the staff at the Fair Employment and Housing Department in California. I spoke with the caseworkers and they did some investigations, and agreed to take my case.

In June 1981, the Fair Employment and Housing Commission filed suit against Kingsburg Cotton Oil Co. on my behalf and against their discriminatory employment practices. A hearing was held in late 1983 and early 1984.

In December 1984 I learned that the court ruled in my favor, and I received $40,000 in damages, plus back salary and all retirement benefits due me. I understand this amount is an additional $100,000. Kingsburg Cotton Oil Co. has now this decision on appeal.

Mr. Chairman, I want you to know that the moneys awarded me will never cover the cost, in terms of the emotional trauma and the economical problems I have suffered from being fired from my job.

All things being equal, I would much rather prefer to sit at my old desk at Kinsburg Cotton Oil Co. talking to customers and selling company products. As you all know, it turned out differently.

Mr. MARTINEZ. Thank you, Mrs. Austin.

[The prepared statement of Virginia C. Austin follows:]

STATEMENT OF VIRGINIA C. AUSTIN, PARLIER, CA

Mr. Chairman and Members of the Subcommittee: My name is Virginia C. Austin from Kingsburg, California. This is my first visit to Washington, D.C. I am thrilled to be here in our nation's capital, but my excitement is somewhat subdued because of what I have come here to tell you this morning.

I was born and raised in the state of Arkansas, where I met and married my husband. In 1941 we left our native state and we moved to sunny California, the land of golden opportuntiy. I raised a daughter and spent the 40's and the 50's as a homemaker. In 1967 following my divorce, I was the sole financial supporter of my daughter. I started work as a receptionist at the Kingsburg Cotton Seed Oil Company. The company processed cotton seeds to remove the oil, which was then sold in bulk form for manufacturing into vegetable oil. The remaining shells were made into meal for cattle feed. I started out at $225 per month, worked a basic 8:30 to 5 day and would go home each night to my daughter. Life in California, as you know Mr. Chairman, is heaven. Despite the fact that I worked long hours and raised my daughter alone, we still felt as though we had our little piece of Eden and we loved life with all the gusto we could muster. Life passed for us both with all the joys and heartaches that are associated with everyday life.

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Mr. Chairman, I might note that the one bright spot in my life during this period was that I met a wonderful man and was married. Without him I may not have made it through my subsequent battle with cancer.

In December of 1976 doctors discovered that I had a metastasis on my ovary. I subsequently had a hysterectomy—following my chemotherapy. My treatment involved going for chemotherapy for one full week every six weeks. After the Monday treatment at 9 a.m. I went home to bed very ill. Tuesday through Friday I had my treatment at 9 a.m. and was back in the office at 9:45 a.m. At the time, my doctors warned me that the treatment I was receiving might not cure my cancer, but would certainly prolong my life. I had a 20 to 25% chance of survival. You can all note that I was told that almost ten years ago and I am here in Washington, D.C. to tell you about it.

Following this incidence of cancer, my boss, Mr. Davis, said that I would be docked for days that I had taken off. I discovered that company policy regarding sick leave for management staff was unwritten and it was given at the discretion of my superiors. Mr. Davis concluded that even after twenty years of working for the same company I was no longer eligible for paid sick leave. From then on it was clear that any future sick days taken would be deducted from my paycheck, no questions asked.

During this period I had routine tests conducted that I always scheduled in the morning before work and when able, I was always in the office right after completion of these doctor's visits. I had no major problems to speak of through 1978 or 1979. In 1979 I took one day off because of illness. In September of 1980 I contracted pneumonia. I opted to stay home in bed against the advice of my doctor who recommended hospitalization. I was absent from work for twelve days—unpaid of course. I returned to work in October and in early December I entered the hospital for seven days of tests to determine the causes of my chronic diarrhea. On the first working day after Christmas, December 29, 1980 I returned to work. I was at my desk talking to a customer about a sales order when Mr. Davis asked to see me in his office. He closed the door, asked me to sit down and then told me he thought I should retire. When I told him I needed my job he said, "Either you retire, or I'll fire you!"

He then said, "You can tell people you retired," and I told him that I wouldn't lie about what happened and that if I had to go, it would be because I was fired. I also told him that at my age (then 57) I would not be able to find another job, and his response was that my husband could take care of me.

Mr. Chairman, I was completely shocked by Mr. Davis' action. All during my treatment period (from 1975 to 1980) I had kept Mr. Davis fully informed of what was happenening, as well as the prognosis for my recovery. He never once mentioned, ever, that I was in jeopardy of losing my job.

I would also like to note that prior to my cancer diagnosis, from my first day of employment in 1957 up to 1975, I only took off two and one-half weeks due to sickness.

You might be interested to know that in 1979, the same man (Mr. Davis) who fired me because of what he characterized as my cancer-related absences, was on paid sick leave for eight months due to an accident. After he returned to work, it was only on a part-time basis and yet he still received his full pay and yearly bonuses.

Mr. Chairman and Members of the Subcommittee, I worked for this company for 23 years. I believe that I was a hard-working, dedicated employee who believed in the concept of a day's work for a pay's pay. As I mentioned earlier, I was promoted in 1974, and during the course of my twenty-three years of employment I received regular pay raises. My final salary upon leaving the company was approximately $1,400 per month.

Following my discussion with Mr. Davis, I left his office, went home, locked my doors and cried. In my despair, I screamed at God and took back the prayers I had said for Mr. Davis' recovery after his accident. Being a Christian, I knew these terrible feelings were wrong, and in the months following my termination they heightened my feelings of helplessness. Having thought I had beaten an enemy called cancer, I discovered that in the end I was still fighting a battle against ignorance and misinformation regarding my illness and how cancer would impact on my ability to continue working.

I subsequently applied for disability insurance benefits and received them through May 1981. All during this time, I hadn't taken any action against my former employers, because I was trying to block this terrible experience from my mind. A friend told me that maybe I should talk to the staff in the Fair Employment and Housing Department in California. I spoke with some caseworkers who did some investigations, and they agreed to take my case. In June 1981, the Fair Employment and Housing Commission filed suit against the Kingsburg Cotton Seed Oil Company on my behalf and against their discriminatory employment practices. A hearing was held in late 1983 and early 1984. In December 1984 I learned that the court ruled in my favor and I received $40,000 in damages, plus back salary and all retirement benefits due me. I understand this amounts to an additional $100,000. Kingsburg Cotton Seed Oil Company now has this decision on appeal.

Mr. Chairman I want you to know that the monies awarded to me will never cover the cost, in terms of the emotional trauma and the resultant economic problems I suffered, from being fired from my job. All things being equal, I would much rather prefer to be at my old desk today at the Kingsburg Cotton Seed Oil Company talking to prospective customers and selling the company's products. We all know things turned out differently.

Mr. MARTINEZ. Mr. Barofsky.

Mr. BAROFSKY. Thank you.

I am a psychologist, and I really can't describe better than what Mike and Tony and Virginia have described in terms of what it means to be a victim of job discrimination. And I would like to be a resource for you in terms of any information that you want to know about the psychological and social factors that may be involved in this.

But I, too, became interested in this problem because of a personal experience. In 1978, 1977-78, I was working as a research psychologist on the surgery branch of the National Cancer Institute. One of the patients there was a young, red-haired, freckled boy from Tennessee who happened to have melanoma of the scalp,

which is a very serious illness, and he had to have the tumor removed and wear a wig to cover his cosmetic defect.

Naturally, his greatest desire was to live as normal a life as possible. When he returned to Tennessee, he got himself a job in a pizza parlor, which presumably is a mark for a young adolescent of normality. One day his wig slipped. And as you might expect, when his employer asked him, why was he wearing a wig, he was very rapidly terminated—for reasons that were totally unrelated to his activity in the pizza parlor.

Well, this outraged us all, all of us that heard this, and this started my own personal interest in this problem. And there are countless other stories that we have encountered along the way.

What we have heard today is that what we are dealing with here is a very special group of people who have unique characteristics: They have had cancer, but in most cases, they are no different than anyone else in terms of their outward appearance, their outward physical appearance, their age or their sex. And, in fact, they have fallen victim to a social stigma which exists in our society.

They also lack access to legal means to gain regress for this experience. I think that is an extremely important point.

They are not incompetent; they are not poor workers; they don't attend their jobs less well than others; they don't perform their jobs less well than others. But somehow, because they have had cancer and have been treated for it, they are dealt with differently.

Discrimination actually comes in many forms and it is a complex phenomenon. I sort of conceptualize this in three basic ways, in which an individual is involuntary dismissed, as happened to Virginia. And her description of her employer saying, well, why don't you retire early, was a very dramatic way of characterizing, I think, what, in fact, happens very often, which is that employers do, in fact, try to encourage patients that have had cancer to retire, and take advantage of the fact that very often they are within the age that approximates being able to retire, in the fifties and sixties, since this is mostly when people have cancer. And, thus, they accept it.

Now, is this discrimination or not? Is this patient who, if he didn't have cancer, would have worked until he retired but now has decided to, is he a victim of discrimination? I suspect that very often, unknowingly maybe to himself, he has, in fact, allowed himself to become a victim of a discriminatory act.

So, that when a patient says that I am going to retire, you have to ask to what extent he was coerced or influenced into doing it. What this reflects is the fact that discrimination comes in so many different and subtle ways.

An additional very important dimension is that very often the patients that have cancer will decide themselves that they can't reach for that career objective they had, they can't apply for that promotion, they can't change that job, because they are afraid. And this kind of self-imposed limitation that happens repeatedly to the cancer patient you never hear of, and never becomes part of the statistics that measure the magnitude of the problem but occurs all the time.

I think the reason why this is so is because there is no mechanism available for the cancer patient, who, in other ways, may

appear perfectly well, to gain access to remedies for his experience. He cannot anticipate that. He has to include the opposite in his thinking about the way he designs his future and his life.

That is the source of the problem, and that is what all of us who are interested in this problem are battling. We are trying to free the cancer patient—they have avoided physical death and they have the potential of becoming socially dead. And we are all interested in trying to help the patient avoid that type of death.

That is what I think this legislation provides, an opportunity to avoid that kind of demise or reduction in their potential, whether or not it is personal or occupational.

I am going to leave my statement to that. I have written some additional comments which are available to you. And I will be available to answer any questions.

Mr. MARTINEZ. Your complete statement will be entered into the record.

Mr. BAROFSKY. Thank you.

[The prepared statement of Ivan Barofsky follows:]

PREPARED STATEMENT OF IVAN BAROFSKY PH.D., INSTITUTE OF SOCIAL ONCOLOGY

Good morning Mr. Chairman. I am Ivan Barofsky Ph. D. a consulting psychologist who is also a member of the Institute of Social Oncology. The Institute of Social Oncology is a national network of researchers who are interested in monitoring the impact of cancer on social and psychological processes such as work. It is important for you to realize that this is an area of active research interest and that this interest is propelled by the persistent reports by patients and their family members of discriminatory experiences. My task this morning will be to provide you with some of the insights that researchers have had as to the nature and form of job discrimination of the cancer patient. What you will learn is that discrimination, an otherwise ordinary human activity, is consistently misapplied when applied to the cancer patient. The reasons for this are simple to comprehend—the stigma and fear of cancer is at times more threatening to those that don't have cancer than those who do and know its reality. As a first step in my task I'd like to tell you how I got interested in this topic.

Prior to my current activities I was Program Director for Continuing Care in the Division of Cancer Prevention and Control of the National Cancer Institute, Director of Psychosocial Studies of the National Surgical Adjuvant Breast and Bowel Project, and a Research Psychologist on the Surgery Branch of the National Cancer Institute, among other positions. My first experience with job discrimination of the cancer patients came while I was on the Surgery Branch of the National Cancer Institute.

One of the patients on the Branch at that time had malignant melanoma of the scalp. This required surgery to remove the tumor and a wig to cover the cosmetic defect. This patient was a young red haired freckled faced kid of 17-18 whose only desire was to keep his life as normal as possible eventhough coming to Bethesda from his native Tennessee made this a difficult task. He was able to get a job in a pizza parlor, presumably a high mark of normality, particularly for a young adult with a deadly disease. Yet, what happened to him was exactly what you anticipate—one day his wig slipped, the owner of the shop noticed, asked him why he needed a wig and fired him. When we heard this story we naturally were all outraged, especially when we learned that there was absolutely no legal remedy available for this child. In fact, I can say that it is only with the introduction of HR 1294, that a possible legal mechanism will be available that is sensitive enough to match the nature of the discriminatory experience of this cancer patient.

This issue of the available legal mechanism matching the nature of the discriminatory experience is an important one and I'd like to talk to you about this. Not so much about what constitutes adequate law but how complex and subtle the discriminatory experience of the cancer patient can be. I have written that job discrimination of the cancer patient can occur in three ways: Involuntary termination, voluntary termination, and self-imposed limitations.

First, it is most important to realize that discrimination is a natural activity of people, and institutions. We do it every day, and most of the time it is not noticed or

is not applied in such a way that it limits the opportunities of persons for reasons that have little to do with their competance or skills. Thus, there is a legitimate reason for discrimination or selection either in a job or for our friends, etc. Discrimination becomes unacceptable when it deals with issues that are ancillary to the job or our relationship, etc.

Some of my colleagues have asked me whether I really believe that the cancer patient is a victim of unwarranted discrimination, especially since the available data is not always definitive. My answer is always yes. It is yes because I know that there are structural factors that make discrimination against the cancer patient, because he or she specifically has cancer, inevitable. For example, most of our health insurance is provided by private insurance based on group experiences. The nature of the actuarial process is to minimize the cost to the total group, and one of the ways to manage the group experience is to be selective about who is a member of the group. Most often involuntary job termination occurs because of efforts to control real or imagined increases in insurance costs. In addition, the wide variety of pre-existing condition clauses for new employees is another effective means that the insurance industry has developed to assure the actuarial foundation of group policies. As long as control of costs is an overriding concern in the management of a actuarial group, then discrimination will occur. The recent experience with the vigorous review of disability payments in the Social Security system, and the public outcry concerning the unreasonable removal of persons from the Social Security roles, is a perfect example of how concern with cost can lead to discrimination. While there appears to be a social consensus on the importance of cost containment, for either public or private insurance, there seems to be less of a consensus, for legal mechanisms to exist that provide a means of redress when the efforts to contain cost becomes excessive. HR 1294 potentially can provide such a mechanism.

Most often cancer patients voluntarily terminate a position, with its profound impact on the productivity of the nation. Since most working persons who develop cancer are in their 50-60's it becomes easy for them to accept early career or job termination. Every time I hear about a cancer patient who has opted for early retirement I ask myself whether this decision was something that the person was forced to do because of their physical status or whether they were taking advantage of something that was available. We all know stories of cancer patients who continue to work under the most adverse circumstances, but most often persons who retire early do so for a complex set of reasons. For one, the patient is told by their family and friends that having cancer they have the right to "enjoy their life", with its implication that their life is limited. In a certain proportion of cases this may be an accurate statement. But in all cases it is not a statement that can be definitively made a priol. What the patient's family and friends are reflecting is the stigma associated with cancer, not necessarily the facts about the particular person—facts which are very often indeterminant.

The employers attitude may also affect the patient's decision making. Most often employers do not make an effort to accommodate the unconventional work schedule or work pattern that a recovering or on treatment cancer patient may require. If maximum productivity is a concern of the employer then he will be tolerant of the modification in the work history required at times by the cancer patient. The employer may offer the patient either full work or early retirement. Naturally, in the midst of recovery this choice is no choice and the patient will select early retirement. Is this job discrimination? By most definitions of job discrimination it would not be, but in fact it is since the patient has not had an opportunity to choose but was, in fact, pressured into making a decision. Paradoxically, the nature of the social security system—that is, it is age dependent—facilitates this decision. It makes the decision for early retirement on disability feasible.

Physicians may also contribute to this form of discrimination by being over accommodating to patients, and accommodation that is not factual but reflects their perception of the meaning of having cancer. Physicians are just as likely to reflect the stigma associated with cancer as the general public.

What is required in this situation, of course, is that the patient be given the opportunity to determine what their work potential is. I learned about the importance of continuing to work while I was on the Surgery Branch of NCI. What I observed was those patients who worked during their treatment continued to work after treatment, while those that did not tended to not work after treatment. This is very important for employers to understand; that is, they can increase the likelihood that their employee will remain productive by keeping him as productive as possible during treatment. It may not be in either parties interest to be over accommodating. What is required is that the employee be given the opportunity to test their limits.

To summarize this section, so called voluntary job termination can be discriminatory for a variety of interpersonal, institutional or structural reasons. Putting it more directly, just because a cancer patient says they have voluntarily terminated a position doesn't exclude the possibility that they were coersed into making that decision.

The final source of job discrimination that cancer patients experience, which is also the most insidious, perversive, and difficult to demonstrate, is the form of discrimination that occurs as a result of self-imposed limitations. And it is this realm that I see HR 1294 having its greatest impact—to convince the cancer patient that they have all the rights and privileges of other citizens; to convince the cancer patient they can fight as hard for their social well-being as they have for their physical well-being.

Self-imposed limitations is what the person with cancer does to themselves. When a childhood cancer survivor accepts a lower paid position, or limits their career objectives they are imposing limits on themselves that may not reflect their intellectual or occupational potential. When an employee avoids changing jobs or seeking a promotion, or avoids becoming a union activist they may be reflecting realistic or unrealistic concerns. Too often, I suspect, the person has incorporated "what it means to have cancer" into their decision making equation, and they too become a victim of the stigma associated with cancer.

I consider self-imposed job limitations a form of job discrimination because it represents the patients perceptions of the public attitude towards cancer. It is a personalization of a social attitude. Naturally, some limitation may be realistic, but more often than not it reflects what a person has learned the public believes it means to have cancer, not what the person themselves have directly experienced.

Mr. MARTINEZ. Let me ask you about something that came to mind while you were talking.

Do many of these people who have suffered cancer and now have been back on the job have a feeling of ineffectiveness, hence if an employer takes some action against them, they are not really eager to go out and try to take recourse against the employer because they simply feel that part of it is their own responsibility?

Mr. BAROFSKY. Yes; they believe the propaganda. They believe the stigma: "Surely there must be something the matter with me."

So, we are not only battling a problem with employers, we are also battling a problem in the cancer patients themselves and how they think about themselves.

Mr. MARTINEZ. So, if we were to pass a law like this and they were to become aware of the protections of the law, they might change their concept to freer thinking?

Mr. BAROFSKY. Right. They have an option.

Mr. MARTINEZ. Very good. Thank you.

Mr. GUNDERSON. Thank you very much, Mr. Chairman.

One of the things I would be interested in all of you providing us is some idea of the standards that you think ought to be used in the bill. By that, I am as opposed as each and every one of you are to employment discrimination based on cancer history. How do we determine where some type of action by a company is justified because of the time away, where the ability of the person to perform really is affected and where is their professional perspective they are unable to maintain the position they are in right now?

You know, as I read the bill, for example, it says it shall be unlawful employment practice for an employer to fail to make a good-faith effort to explore reasonable accommodations. How do you define good faith effort? How do you define reasonable accommodations?

Then you get on page 5, as I read the section, it says that the only way that you can dismiss an employee would be if that em-

ployee is unable to perform the job in a manner which would not endanger the safety of such employee. Well, is there a standard that ought to be followed so that it is not only the safety of that individual employee, but a certain level of competence. I am just trying to find out how we get to specifics and answer some of these questions that I know the antagonists are going to bring up on the floor. Any comments by any of you?

Dr. BARONSKY. That is a technically very difficult—you are asking a hard question. I am not sure there should be a specific answer to it. My own view is that what is needed here is not so much a standard that is specified in terms of the way an employer or employee should act, but rather a mechanism for redress if one or the other feels that their rights have been violated.

I think that that is what this legislation provides, and ensures it by saying you will try and work your problems out, but if you cannot, then you have access to the courts, which is now very limited.

Unless you are implying that what we need to do is set up a set of standards for each kind of job—I don't think that you mean that.

Mr. GUNDERSON. Here is my concern. Let me take Mr. Igneri—is that right?

Mr. IGNERI. Right.

Mr. GUNDERSON. Let me take your example. Blatent discrimination ought to be prevented, such as what you have gone through. I am all with you.

Let's take Ms. Austin. This sounds to me like you had a legitimate grievanced and obviously the State of California has agreed with you. OK. You took a day off a week for chemotherapy, and then you came in—can I suggest, say, half-an-hour late every day after that?

Ms. AUSTIN. Yes.

Mr. GUNDERSON. OK. What is excessive and what isn't? If you took 3 days a week off, is that excessive? Is 1 day—you know, I am just asking a question. I would like you people to give me a human response so when we sit down with the lawyers who give us a technical response, we can balance the two.

Ms. AUSTIN. In my case my chemo was every 5 weeks I would have a week of chemotherapy, and on Mondays. So, that was like every 6 weeks on 1 day that I was out all day. Otherwise I was back at work.

Mr. GUNDERSON. Do you think your problem with the company was simply the amount of time you were absent? Was there ever any allegation that when you were there your health wasn't——

Ms. AUSTIN. Oh, no; my health was——

Mr. GUNDERSON. So, there was never any question about your ability to perform your job when you were on the job. In your case, it was only your absence for treatment that caused the trouble.

Ms. AUSTIN. Actually, why I was terminated was that week that I was in the hospital in December, then when I returned was when I was terminated.

Mr. GUNDERSON. In the last year before you were terminated, can you give us an idea of how many days you were not——

Ms. AUSTIN. In 1979 I was off 1 day. In 1980 I had pneumonia and then I had the diarrhea. So I am not sure how many days this, because I took some vacation time in there. About 19 days, I think, that year.

Mr. GUNDERSON. You were off 19 days for sick purposes, not counting the vacation?

Ms. AUSTIN. No; because I let some of my vacation absorb that.

Mr. GUNDERSON. See, now, like just for an example, I give my staff 2 weeks sick leave.

Ms. AUSTIN. Sir, we have no sick leave there. There was no sick leave at all.

Mr. GUNDERSON. None at all. So you took 19 days of docked pay.

Ms. AUSTIN. Yes.

Mr. GUNDERSON. OK. Any comments?

Mr. IGNERI. I would just like to say that in my situation I wasn't even given the chance. They had this article No. 69 which says any type of tumor automatically rejects you. It was—the chief medical surgeon of the NYPD had said that the occupation of a police officer would be too stressful for a condition such as mine. And I had always felt that you don't know what stress is until you go through what a person has gone through when you have been diagnosed with cancer. You know, this to me was—that was making it stressful.

I mean, I had gone through everything already. And now they are really—you know, they are making things much harder than what I really deserved. I had proven to myself—I have been better almost 6 years now.

I am settling for something because I want to—I am settling because it has been a long time and I just want to get to where I have been. You know, I want to get there. I want to achieve it.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. GUNDERSON. Thank you.

Mr. MARTINEZ. Before we turn the questioning over to Mr. Atkins, I would like to touch upon something Mr. Gunderson was saying about standards. I think that the key here is not so much in standards, but the key lies in giving people recourse because ultimately as in Mrs. Austin's case, the court looking at the evidence will decide whether there was discrimination or not. And that will be judged on the evidence of that particular case.

I would imagine that in every case that would come before the court, there would be different circumstances, a completely different situation. And so I would say that the argument to anyone who would say, this is ambiguous or this is not definite enough, it is not, it is just simply allowing people recourse under our system.

Would you agree?

Dr. BAROFSKY. Yes, I would. I was thinking about a hypothetical example of a worse case. Here is a cancer patient who is close to terminally ill and has some minor physical disability, but refuses themselves to psychologically accept it and they insist upon going to work and working. OK. Here is an example.

An employer—he is a machinist, and the employer is afraid that he is going to have an accident. OK? Under those conditions, if the employer says to him "you are fired," or "I can't let you continue to work because you are going to physically endanger yourself,"

you know, I don't see him being accused of engaging in a discriminatory act. That is not what we are talking about.

That kind of problem in which the safety of the employer—he is at risk here even though they themselves don't see it, then becomes an issue which I think a court could properly litigate and make a decision about rather than either the employee or the employer.

You know, but that is not what we are talking about. We are talking about people who are well, people who are physically able, who want to get and keep a job and they are having these horrendous experiences.

Mr. MARTINEZ. Thank you.

Mr. Atkins.

Mr. ATKINS. Yes, it would seem particularly from Mr. Igneri's statement and other evidence that has been brought forward by the earlier panel that to a certain extent in job applications there is simply archaic requirements that reflected people's medical knowledge or medical beliefs at one time in the past.

And, of course, there has been tremendous progress made in cancer therapy, and that one thing that would make sense—and I am wondering whether there have been any efforts to do this—would be to simply get the medical community to agree to some common definitions: The question of what kind of stress tolerance a recovered or former Hodgkin's patient may have would solve many of those problems, and it would seem to me it would be possible to get concensus in the medical community and that that would make sense.

Dr. BAROFSKY. I am not sure that I agree with you because I think you are talking about complicated issues. I mean, someone may have a physical impairment and this not be a disability to them. I mean, they may, in fact, be able to do a wide range of activities, but people may differ on this.

So I think it will be hard for you to identify a fixed standard again in terms of what is sufficiently impairing in terms of functions that would eliminate someone, you know, that you could set down.

Mr. ATKINS. But to take an example, the regulations for the New York City Police Department would seem as though those were incorporated at the time fairly innocently to protect applicants. That is my assumption.

Dr. BAROFSKY. Right.

Mr. ATKINS. Now, it would seem to me that there has to be certain medical evidence that either there are problems with stress and with that kind of work with somebody who is a recovered patient or who has a particular condition or there aren't. It would seem pretty clear that from what we know now medically that there isn't a problem with stress, with former Hodgkin's patients and that that kind of thing could be eliminated from the requirement just very simply because we have new medical data on it.

Dr. BAROFSKY. There is no doubt that not only the public but also even the insurance actuarials are behind in terms of the available statistics in terms of survival and morbidity related to the various types of cancer. And this is an educational task. There is no doubt about it.

But whether or not—and I guess a minimum criteria can be discussed that would legitimately eliminate someone from a position. But I think, again, there should be some sort of a means test, some sort of a process, rather than a written standard that says, you know, because you have such-and-such a condition you can't be eligible for the job.

Mr. ATKINS. Oh, absolutely. What I am suggesting is that you exclude those things that a priori make it impossible for someone to get into a particular position when they are not medically relevant.

Dr. BAROFSKY. OK. When they are not medically relevant. Give me an example of what you mean.

Mr. ATKINS. Well, the New York City Police Department case. That is not medically relevant, that question. That automatically ought to be excluded so it is not in issue. There may be other things that are more subjective where you need more latitude, but in that instance it would clearly seem that it wasn't relevant.

Mr. IGNERI. OK. In my case, I felt that having gone through all this, it only made me a stronger person to deal with everything in common day life.

Mr. ATKINS. I would guess that probably your stress tolerance is greater than anybody—certainly most of the people in this room and probably most of the people in the police department given what you have already gone through.

Mr. IGNERI. That is exactly the way that I felt. I always feel very strongly about that. That is why they call this a catastrophic illness because this is—you know, when you get through this, you have gone through a major catastrophe. I feel so much of a stronger person just by that, you know.

To hear this, you know, and see this in black and white, I always thought it was, you know, a joke.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. Biaggi.

Mr. BIAGGI. Thank you, Mr. Chairman.

When the question of stress is raised in connection with Mr. Igneri's profession, which I was associated with for some 23 years, that is meaningful. However, Mr. Igneri has recovered, despite the more stressful period in his life, the fact that he was suffering from Hodgkin's disease. If they can recover with that stress, I don't think any other stress in the world could match that stress.

As far as standards are concerned, well, we passed the elimination of the mandatory retirement for the aged. And one of the principal standards is the man's ability or woman's ability to do the job.

Mr. Gunderson, and rightly so, raises the question of reasonable accommodation and how that should be clarified, and I think that that is correct. There is no question about it.

Well, when we dealt with the Grove City case, we didn't include it in the language of the legislation, per se, but we did include it in the report, a whole series of specifics, and we could accomodate this problem, this question, in the same fashion.

Clearly, there must be an answer given to that question because it is a reasonable question. It is one we can predict will be asked on the floor. We must be prepared, as Mr. Gunderson says, to respond to that.

Officer Igneri, how long have you been serving on the New York City Transit Police Department?

Mr. IGNERI. A little over 2½ years.

Mr. BIAGGI. Doing your job regularly?

Mr. IGNERI. I haven't missed 1 day yet. Haven't had a sick day yet.

Mr. BIAGGI. You anticipated my next question. So, you make the point. Clearly, you make the point. I think that that is sufficient evidence, and I am hopeful that the police department will process you quickly and have you in the real department, in the next class.

We say—that is an inside joke among the police. I served in the New York City Police Department, Mr. — served in the hole, that is the subway. By the way, which is a tougher job. Serving as a police officer in the subway is a tougher job. The environment stinks—in New York City, not metro.

But, Dr. Barofsky, in research which Dr. McKenna cited, you note that less than 2 percent of the discrimination cases filed under the Rehabilitation Act are filed by cancer survivors. I noted that this figure was between 74 and 80. Was there any more? .

Dr. BAROFSKY. No. I am not aware that that data has been continued to be collected.

Mr. BIAGGI. In 78.

Dr. BAROFSKY. Yes. I am not aware that that data has been continued to be collected. The data was I think the product of an individual who was then in the Department of Labor who was interested in this issue, and summarized the cases as they came in.

Mr. BIAGGI. Is discrimination more prevalent in the public or the private sector?

Dr. BAROFSKY. Paradoxically, my impression is that it is more prevalent in the public sector. I found more cases, boards of education, and the military, Government agencies, than maybe people realize.

But this doesn't mean that it isn't also a major magnitude in the private area. We don't hear about it. I mean, my little friend from Tennessee, you know, who was fired because he happened to have a melanoma of the scalp, you don't hear about those cases. They just happen to come along.

And our ability to assess these issues is not sufficiently sophisticated that we can give you all of the times it happens.

Mr. BIAGGI. Is it possible you don't hear about it because most people out there are not aware that there might be recourse?

Dr. BAROFSKY. Well, I think we don't hear about it because they believe that it should happen to them. Sadly enough. They believe that they should be discriminated against.

Mr. BIAGGI. Like you said, they believe their propaganda.

Dr. BAROFSKY. They believe the propaganda. And because they have no legal redress. They have no means of saying this shouldn't happen to me.

Mr. BIAGGI. Mr. Igneri, a final question. I have a particular point to make.

During those several years you worked in the department, I am sure there were some days you weren't up to snuff, whether it be a cold, a headache or indigestion, and if that be the case, and you went to work anyway because many men and women who serve

would oftentimes take advantage of sick leave, were you motivated more strongly because of your past history?

Mr. IGNERI. Most definitely. I mean, the job I am in right now, we have unlimited sick leave. We can be out for as long as we want. You know, unlimited sick days.

You are absolutely right. If I had some, you know—under the circumstances of any other person, they would have been out sick, but I always felt that I had to go to work just because——

Mr. BIAGGI. Mr. Chairman, that last question and response, just is on all fours with the experience we had with the elderly dealing with the elimination of mandatory retirement. They found that the elderly population had a superior absentee record, they had greater motivation simply because, one, they had that work ethic held over from another generation, perhaps, and, two, because they were moving along in years and they knew there was a greater focus on their presence, on their performance, and they did make that extra-special effort to be there.

Their productivity and their attendance exceeded the norm.

Mr. MARTINEZ. Thank you, Mr. Biaggi.

To you, Mr. Igneri, good luck.

Mr. IGNERI. Thank you.

Mr. MARTINEZ. I guess it is what they say, when we are second, we try harder.

Mrs. Austin, good luck on the appeal.

Mr. Barofsky, thank you very much for your expertise.

With that, we will adjourn this panel and go to our next panel.

While I am calling the second panel, I will express my appreciation to Mr. Biaggi.

The next panel is the Honorable Joe Moakley, member of Congress from Boston, MA. Then Mr. Edward Kennedy, Jr., from Boston, MA. Welcome, gentlemen.

The testimony we are about to receive is regarding H.R. 370, and with that we will begin with the Honorable Joe Moakley.

STATEMENTS OF HON. JOE MOAKLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS, AND EDWARD KENNEDY, JR.

Mr. MOAKLEY. Thank you very much, Mr. Chairman, and distinguished members of the subcommittee.

I would like to thank you at this time for holding hearings on this legislation which would make discrimination against handicapped individuals an unlawful employment practice.

I believe that the handicapped of this Nation have faced employment discrimination for far too long. This denial of employment has not been based on vocational skills or the ability of these individuals to perform the required task of the job, Mr. Chairman, rather because these people are classified as handicapped.

My initial involvement and awareness of the gravity of the situation began in 1978 when a young intern in my congressional office, a Larry Fraze from Westwood, MA, brought the matter to my attention. Larry was an extraordinary young man who did extensive research and work on the issue of employment of the handicapped

and on major obstacles that this segment of our population faces in obtaining jobs.

Larry himself was physically handicapped with cystic fibrosis, a progressive disease that attacks the lungs and digestive systems and is the No. 1 genetic killer of young people in America. But because he was afflicted with this illness he was often in pain during the workday.

However, he never let his disability in any way affect the high standards that he set for himself in his work. If anything, he seemed to work more diligently and he also worked without complaint.

He rarely, if ever, was absent from his job in my office. In fact, his internship was so successful and so beneficial to my office that I extended his work for another semester. It is because of Larry Fraze that I became involved in this issue and introduced the original version of H.R. 370 back in the 96th Congress.

Larry, himself, was the best example of the need for this legislation which he helped author. He saw first hand the barriers that a disabled person often faces when they seek employment.

He also knew that disabilities do not necessarily interfere with one's ability to perform a job effectively, and that the handicapped are good, reliable employees who can enhance rather than hinder the productivity of the workplace.

I wish Larry could be here today to speak on his experiences and work with this bill. But, unfortunately, Larry died on April 5 after his long struggle with his illness. But I know that he would be very pleased to see this critical issue that is being addressed today by this panel.

Mr. Chairman, members, under current law there is no nationwide provision that protects the handicapped from employment discrimination. In the Rehabilitation Act of 1973, section 504 provides protection against discrimination against the handicapped with regard to employment under any program or activity receiving Federal financial assistance or under any program or activity conducted by any executive agency or by the U.S. Postal Service.

While I feel this statute is a very significant step in implementing a national policy toward integrating handicapped people into the American workplace, it only touches a very small portion of the employment sector of our society. And it does not extend into the private sector.

Unemployment rates for the handicapped are significantly higher for the nonhandicapped population. Only a very small percentage of the handicapped who are able to work are currently employed.

According to recent figures quoted by the President's Commission on Employment of the Handicapped, current unemployment rates among handicapped workers are estimated to be between 50 and 75 percent. These figures are an increase from the pre-recession rate of 45 percent.

Mr. Chairman, a study prepared under a Department of Health and Human Services contract indicated that only a very small percentage of these cases results from the inability of the handicapped person to perform a regular full-time job. In fact, according to a recent publication by the U.S. Commission on Civil Rights, numer-

ous studies have shown that handicapped workers, when assigned to appropriate positions, perform these tasks as well or better than their fellow nonhandicapped workers.

A study by this same agency, Mr. Chairman, of job appointments of severely disabled workers to Federal agencies over a 10-year time span stated that the work record was "excellent".

Cost factors have long been cited by opponents of this issue to prevent its implementation. However, studies have documented substantial cost benefits from employment of handicapped individuals who otherwise would have to rely upon public assistance or institutional placement simply to survive.

A 1976 study commissioned by a former Department of HEW's Office for Civil Rights estimated that by eliminating discrimination against handicapped persons in HEW-funded grant programs alone would yield $1 billion annually in increased employment and earnings for handicapped people.

In addition, Mr. Chairman, to the increasing GNP, this earnings increase would increase tax revenues by an estimated $58 million.

According to statistics, funds generated by eliminating handicapped discrimination would return more than $3 for each dollar spent. And these figures, of course, only represent monetary gains of eliminating employment discrimination.

Certainly, the greater self-worth and the enhanced quality of life for the handicapped are equally important factors in the consideration of this very important issue.

The need for protection of the handicapped with regard to employment has been recognized. In the 1979 Senate hearings on similar legislation, it was reported that 35 States and the District of Columbia have statutes prohibiting employment discrimination against the handicapped.

Since that time, my own State, the Commonwealth of Massachusetts, has enacted an amendment to its constitution to prohibit discrimination to an otherwise qualified handicapped with regard to employment.

The Massachusetts law is almost identical to section 504 except that it applies to both the public and private sector. While these State laws are certainly encouraging, the fact remains that the remaining one-fourth of the States have no protection for the handicapped.

Additionally, even though States with laws differ greatly in the regulations. Mr. Chairman, I would like to submit for the record the attached sampling of 10 State laws on this matter and the differences that now exist. I believe the passage of a uniformed Federal law would correct these differences and at the same time show the support of the Federal Government for comprehensive national policy of equal employment opportunity that extends to the handicapped.

In closing, Mr. Chairman, I would like to stress this point. This measure is not intended in any way to inflict undue hardship on the employer. This bill would simply insure that an individual who is handicapped will be given the opportunity to be evaluated and hired on the basis of his or her vocational ability and not simply the handicap. It is estimated, Mr. Chairman, that 9 to 13 percent of population is handicapped, and to deny even a portion of these in-

dividuals employment opportunities only because of their handicap is a national tragedy.

We cannot afford this loss in dollars or a loss in human dignity. And the time has come for our Nation to enact a policy to protect the rights of all their citizens.

Thank you very much, Mr. Chairman and members.

[The prepared statement of Hon. Joe Moakley follows:]

PREPARED STATEMENT OF HON. JOSEPH MOAKLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. Chairman, Members of the Subcommittee on Employment Opportunities, I would like to take this opportunity to thank you for holding hearings on this legislation which would make discrimination against handicapped individuals in unlawful employment practice. I believe that the handicapped of this nation have faced employment discrimination for far too long. This denial of employment has nt been based on vocational skills or the ability of these individuals to perform the required tasks of the job, but rather because these people are handicapped.

My initial involvement and awareness of the gravity of this situation began in 1978 when an intern in my Congressional office—Larry Fraze from Westwood, Massachusetts, brought the matter to my attention. Larry was an extraordinary young man who did extensive research and work on the issue of employment of the handicapped and on the major obstacles that this segment of our population faces in obtaining jobs. Larry himself was physically handicapped with cystic fibrosis, a progressive disease that attacks the lungs and digestive system and is the number one genetic killer of young people in America. Because he was afflicted with this illness, Larry was often in pain during the work day. However, he never let his disability in any way affect the high standards he set for himself in his work. If anything, he seemed to work more diligently and without compliant. He rarely, if ever, was absent from his job in my office. In fact, his internship was so successful and beneficial to my organization, that I extended his work in my office for another semester.

It is because of Larry that I became involved in this issue and introduced the original version of H.R. 370 back in the 96th Congress. Larry, himself, was the best example I know of the need for this legislation which he helped author. He saw first hand the barriers that a disabled person often faces when seeking employment. He also knew that such disabilities do not necessarily interface with one's ability to perform a job effectively; that the handicapped are good, reliable employees who can enhance rather than hinder the productivity of the workplace. I wish Larry could be here today to speak on his experiences and work with this bill. But, unfortunately Larry died on April 5th after his long struggle with his illness. I know he would be very pleased to see that this critical issue is being addressed by this panel today.

Under current law, there is no nationwide provision that protects the handicapped from employment discrimination. In the Rehabilitation Act of 1973, Section 504 provides protection against discrimination against handicapped with regard to employment under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the U.S. Postal Service. While this statute is a significant step in implementing a national policy toward integrating handicapped people into the American workplace, it only touches a comparatively small portion of the employment sector of our society. It does not extend into the private sector.

Unemployment rates for the handicapped are significantly higher than for the non-handicapped population. Only a very small percentage of the handicapped who are able to work are currently employed. According to recent figures quoted by the President's Commission on Employment of the Handicapped, current unemployment rates among handicapped workers are estimated to be between 50 and 75 percent. These figures are an increase from the pre-recession rate of 45 percent. A study prepared under a Department of Health and Human Services contract indicates that only a very small percentage of these cases results from the inability of the handicapped person to perform a regular, full-time job. In fact, according to a recent publication by the U.S. Commission on Civil Rights, numerous studies have shown that handicapped workers, when assigned to appropriate positions, perform these tasks as well or better than their fellow non-handicapped workers. A study by this same agency of job appointments of severely disabled workers to Federal agencies over a 10 year time span stated that the work record was "excellent."

Cost factors have long been cited by opponents of this issue to prevent its implementation. However, studies have documented substantial cost benefits from em-

ployment of handicapped individuals who otherwise would have had to rely on public assistance or institutional placement simply to survive. A 1976 study commissioned by the former Department of HEW's (Health, Education, and Welfare) Office for Civil Rights, estimated that by eliminating discrimination against handicapped persons in HEW-funded grant programs alone would yield $1 billion annually in increased employment and earnings for handicapped people. In addition to increasing the GNP, this earnings increase would increase tax revenues by an estimated $58 million.

According to statistics, funds generated by eliminating handicapped discrimination would return more than 3 dollars for each dollar spent. These figures, of course, only represent monetary gains of eliminating employment discrimination. Certainly the greater self-worth and the enhanced quality of life for the handicapped are equally important factors in the consideration of this issue.

The need for protection of the handicapped with regard to employment has been recognized. In 1979 Senate hearings on similar legislation, it was reported that 35 states and the District of Columbia have statutes prohibiting employment discrimination against the handicapped. Since that time, my own State of Massachusetts has enacted an amendment to its constitution to prohibit discrimination to an otherwise qualified handicapped individual with regard to employment. The Massachusetts law is almost identical to Section 504 except that it applies to both the public and private sector. While these state laws are certainly encouraging, the fact remains that the remaining one-fourth of the states have no protection for the handicapped. Additionally, even those states with laws differ greatly in their regulations. Mr. Chairman, I would like to submit for the record, the attached sampling of ten state's laws on this matter and the differences that exist. I believe that passage of a uniform Federal law would correct these differences and at the same time show the support of the Federal government for a comprehensive national policy of equal employment opportunity that extends to the handicapped.

In closing, I would like to stress this point. This measure is not intended in any way to inflict undue hardship on the employer. This bill would simply ensure that an individual who is handicapped will be given the opportunity to be evaluated and hired on the basis of his or her vocational ability and not simply the handicap. It is estimated that 9 to 13 percent of our population is handicapped. To deny even a portion of these individuals employment opportunities only because of their handicap is a national tragedy. We cannot afford this loss in dollars or in loss of human dignity. The time has come for our nation to enact a policy to protect the rights of all citizens.

Mr. MARTINEZ. Thank you, Congressman Moakley. And your attachments will be entered into the record without objection.

[The attachments follows:]

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, May 14, 1985.

To: Hon. Joe Moakley.
From: American Law Division.
Subject: A Ten State Sample Survey of Statutes Concerning Employment Discrimination of Handicapped Persons.

This is in response to your request of May 9, 1985, concerning a sample of state statutes which relate to employment discrimination toward handicapped persons. The states included in this survey were selected at random although an attempt was made to include states within certain geographical areas, i.e., Midwest, East, South, etc.

A chart has also been prepared which breaks down the various elements of this body of law in each of the ten states represented, within a spectrum of position from "promoting employment of handicapped persons" to "providing for attorney's fees."

Four of the ten states selected, Alabama, Colorado, Mississippi and Vermont do not provide for administrative of judicial precedures to protect the employment rights of handicapped persons. However, these states have established a state policy to employ handicapped individuals in the public service or do promote employment of handicapped persons within the private sector. Three states have also set up Governor's Committees to oversee and report on these functions (see attached chart). The State of Vermont repealed a statute in 1981 (21 § 498), which had prohibited unreasonable employment discrimination of handicapped persons. The State of Mississippi phased out the Governor's Committee on Employment of the Handicapped effective 1980 (§ 5-9-5).

The remaining states, Florida, Illinois, Michigan, New York, Texas and Washington have statutes which: (1) Prohibit employment discrimination of handicapped individuals; (2) establish administrative and judicial procedures to protect handicapped persons from job discrimination, and; (3) prohibit discrimination toward handicapped persons within labor organizations. Five of these states also provide for attorney fees as part of the remedy for violation of these statutes (see chart).

We hope this information will be of assistance to you.

Sincerely,

M. ANN WOLFE,
American Law Division.

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CRS-5

SAMPLE SURVEY OF STATE STATUTES CONCERNING EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS

	AL.	CO.	FL.	IL.	NI.	MS.	N.Y. Executive Law	TX. Rev. Civ. Stat.	VT.	MASS.
1. Promotes Employment of Handicapped Persons	§21-5-1	§24-34-801 (a)							21 §497	
2. Establishes Governor's Committee	§21-5-1							Art. 5221K §3.01	21 §497a	
3. Establishes State Policy to Employ Handicapped Persons in Public Service	§21-7-8	§24-34-801				§25-9-149				
4. Prohibits Employment Discrimination of Handicapped Persons			§760.10	§2-102(A)	§37.1202(1) §37.1102(1) & (2)		Art. 15 §296(a)	Art. 5221K §5.01(1)		§49.60.030 (a)
5. Prohibits Discrimination Within Labor Organizations			§760.10(3)	§2-102(c)	§37.1204 (a)		Art. 15 §296(c)	Art. 5221K §5.03(1)		§49.60.190
6. Establishes Administrative Procedures to Aggrieve Violations			§760.10(10)	§7-101(B) §7-102(A)	§37.2601 (2)		Art. 15 §297	Art. 5221K §6.01		§49.60.140
7. Establishes Judicial Procedures to Aggrieve Violations			§760.10(12)	§8-111(A) (1)	§37.2606		Art. 15 §298	Art. 5221K §7.01		§49.60.270
8. Provides for Attorney's Fees			§760.10(13)	§8-108(g)	§37.2605 (j)			Art. 5221K §701(a)		§49.60.030 (2)

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Mr. MARTINEZ. I would like to take an opportunity to welcome a very distinguished guest, Senator Kennedy, and invite you, if you would choose, to join us on the platform here.

Our second witness on this legislation is Edward Kennedy, Jr.

Mr. KENNEDY. Thank you, Mr. Chairman.

I just want to, first of all, thank the committee for hearing my testimony. I have been involved in issues dealing with the physically and mentally challenged for the last couple of years, and I would just like to begin my testimony just to say that I reject the term, "disabled." I reject the term, "handicapped."

And this morning, we have been talking about some of the real problems that face the physically and mentally challenged in our country, the ones of public sterotype and the ones of public attitude. And I think that a lot of effort has been made to knock down some of the physical barriers which prevent people from fully participating in American life, which I believe is what we are really talking about today.

We are not just talking about the right to have and hold an adequate job. We are talking about integration of over 30 million people in our country. And right now, according to the civil rights code of 1964, the United States has made it a matter of public policy to exclude individuals, competent individuals. Individuals are excluded because throughout history people—and this morning we heard from members testifying for another bill. And what they were basically talking about is a public stereotype and public attitudes.

I said at the Democratic National Convention last summer that it is not the handicap of accident or birth that keeps individuals with disabilities back, it is your and my attitude. And the fact is that we live in a society now where having a disability is associated with being a tragedy. And for years and years how we have dealt with people who are different from ourselves is to segregate them. And I am very, very proud to be involved with the movement that is the classic civil rights movement and a classic human rights movement, because there isn't a group throughout history that hasn't been more isolated, more segregated and more misunderstood than individuals with disabilities in our society.

Perhaps George Will, the national syndicated columnist, described our struggle best when he stated:

> Even just a generation from now we will, I hope, be mortified by the memory of our complacent acceptance of the social segregation of the handicapped—as mortified as we are today by the memory of racial segregation. We are barely at the beginning of the last great inclusion in American life, the inclusion of the handicapped.

And before I go on, I would just like to really define the fact that this really is a civil rights issue and really should be treated as such. Section 504 of the Rehabilitation Act of 1973 gave us, as Congressman Moakley said, our first sense of civil rights legislation. But that is only in the public sector. What we need to do now is to ensure—and really the reason why we need affirmative action in this area is to really—because we have got so much further to go because where we have been put throughout history is really been a dependent situation.

Our goals and dreams are like all other Americans, to have a family, to dream a dream, to attend school in a nonsegregated environment, to achieve meaningful employment and to obtain citizenship. The principle of citizenship insists that society treat each individual as a person, one who is worthy of respect and one who belongs. Stated negatively, the principle forbids society to treat an individual citizen as a member of an inferior or dependent caste or a nonparticipant.

The disabled community is currently segregated both in law and, in fact, by the programs which keep us apart and dependent and by the stereotypes and prejudices which foster the notion of pity, fear, and dependency. I have said in my travels both around the State of Massachusetts, that handicappism is more profound than racism or sexism. And those are harsh words. But if you think about it, they are true.

As I have said in my prepared statement, which I will give you each a copy of, our movement is not unlike the women's rights movement and the black movement that went before us. But really, as I said before, there is no other group that has been alienated as much. And as I said before, as well, affirmative action must be mandated to overcome the effects of a history of discriminatory policies and ensure the existence of a meaningful equality of opportunity in the future.

Who are the disabled anyway? Who are the people that we really are talking about? We are talking about 36 million—an estimated 36 million Americans of all ages; 9.5 million children, 15.2 million men and women in their prime working years, and 11.4 million senior citizens. Racial and ethnic minorities are heavily overrepresented, 22 percent of the black population, 20.6 percent of the Hispanic population and 19 percent of the American Indian population.

Sixty-two percent of the disabled population who are able and willing to work are unemployed. The unemployment rate for the Vietnam veterans is an alarming 87.7 percent compared to 8.8 percent unemployment for all Vietnam veterans. And those disabled individuals that do find work, earn less than nondisabled people.

Combining these staggering statistics with the high cost of health care, which we all know about in this country, and you have an indication of the harsh realities facing the 36 million citizens. But there is cause for optimism; the changing nature of the economy. And this is an area that I have been working with in the Massachusetts Corporate Partnership Program in the State of Massachusetts, which is comprised of 250 corporations around the State who have had excellent records in employment practices of individuals with disabilities and trying to duplicate those programs to other corporations, both around the State and around the country.

Because there is ample evidence which suggests that our country is going through a radical economic change, we live in a country right now where brute stength is not a prerequisite to employment, and our country is moving away from the industrialized base to a communications base. Right now all you need is a sharp mind to be able to perform many of today's jobs. I mean those are simple facts. And right now we have employment practices which exclude so many people.

There are some studies which show that by the year 2000, up to 75 percent of the jobs have yet to be created. Well, that just opens up so many doors for indiviudals with varying abilities. And I think that to have public policy in the United States not include individuals with physical and mental challenges, I can't believe that we still are holding on to these outdated polices of the 19th century which continue to hold people back. There are so many people out there that want to work.

And as I said, discrimination is part of the problem, but I think equal opportunity is as much of the problem as anything else. But how are you going to get a job unless you have public transportation to get to that job? Public transporation for individuals with disabilities, equal access to education, I think, are all intertwined in the disability movement.

Legislation such as H.R. 370 has already been presented in several forms. I can attest to the success that those of us in Massachusetts who happen to be disabled have had because of the initiative of the Dukakis administration. The State of Massachusetts has provisions for what H.R. 370 would do nationally. The Massachusetts Corporate Partnership Program now insists that corporations involve individuals with disabilities and their affirmative action programs.

But this committee should not just hear our side of how important and urgent this legislation is. They should hear it from the employers themselves. The employers don't need Carnegie studies to tell them how productive, how motivated, and how attentive disabled workers are. Government leaders don't need to be told how qualified individuals on SSDI are draining our economy. Putting people to work is not just morally right, it makes good business sense for our industries and governments.

In 1972 Senators Humphrey and Percy introduced a similar amendment that Congressman Moakley, over 10 years later, introduced in the House. Senator Percy made the following assertions:

> My action today represents further effort to insure that the handicapped will receive the basic rights to which every human being is entitled.
>
> It had been my hope that the concurrent resolution would begin a national commitment to eliminate the glaring neglect of our handicapped citizens. The amendment we are introducing today would realize this commitment guaranteeing the handicapped equal opportunity to education, job training, productive work, due process of law, a decent standard of leaving, and protection from exploitation and degradation. In essence, our amendment would give the handicapped their rightful place in society.

As far as our human and civil rights are as Americans, nothing has changed since the time of this statement. One area in which we have made some progress is in the terminology in which we have chosen to classify those who are different. As I told you before, I prefer to use the term "physically and mentally challenged," because the language that we use is so important because terminology really sets, as I said before, they are attitudinal barriers, barriers in people's minds. Handicapped and disabled stress inability rather than ability. And our handicap doesn't get in our way. Why should it get in yours?

The 36 million physically and mentally challenged Americans represent an enormous largely untapped wealth of human resources. As employers, consumers, and taxpaying citizens, we can

make a major contribution to the growth of our economy and our society, but beyond all these statistics, all the political and economic rationales, all the appeals to corporate responsibility we could represent to you, there are millions of us challenged men and women striving for equal citizenship, not charity.

I urge this committee to pass H.R. 370 and lead its fight on the floor. We are all one accident away from being challenged. Thank you very much.

[The prepared statement of Edward M. Kennedy, Jr., follows:]

PREPARED STATEMENT OF EDWARD M. KENNEDY, JR.

The Civil Rights Act of 1964 should be amended to make discrimination against individuals with disabilities in unlawful employment practice.

Section 504 of the 1973 Rehabilitation Act, which prohibits—on basis of handicap in all federally assisted programs—launched disability rights as a civil rights movement. It is now time for our country to take the next logical step and commit ourselves philosophically and politically to full integration and equal opportunity for all of America's citizens.

While these goals are new and revolutionary in regard to treatment of disabled people, they are not radical in relation to the American values of individual freedom of choice and involvement in the social and economic mainstream.

Like the black and women's movements which preceded it, the disability movement's goals are simple: To eliminate the public stereotypes associated with being disabled, and to achieve full integration and equal citizenship.

Perhaps George Will, the nationally syndicated columnist, described our struggle best when he stated, "Even just a generation from now we will, I hope, be mortified by the memory of our complacent acceptance of the social segregation of the handicapped—as mortified as we are today by the memory of racial segregation. We are barely at the beginning of the last great inclusion in American life, the inclusion of the handicapped. . . ."

Will's testimony lends support to what all of us who are involved in the rights of individuals with disabilities are saying: We want to be respected as people. H.R. 370 will help us achieve our rightful status in the world.

Our goals and dreams are not unlike all other Americans: To have a family, dream a dream, attend school in a nonsegregated environment, to achieve meaningful employment, to obtain citizenship.

The principle of citizenship insists that society treat each individual as a person, one who is worthy of respect and one who belongs.

Stated negatively, the principle forbids society to treat an individual citizen as a member of an inferior or dependent "caste" as a nonparticipant.

The disabled community is currently segregated in law and in fact: By the programs which keep us apart and dependent, and by the stereotypes and prejudices which foster the notion of pity, fear, dependency.

As I stated at the 1984 Democratic National Convention, "It is not the handicap of accident or birth—but the one created by society" referring to the attitudinal barriers which stifle all who are segregated.

Handicappism is more profound than racism or sexism. These are strong words, but if you think about it they are true. No other group has been more alienated, segregated, and misunderstood than our Nation's handicapped population.

Affirmative duty must be mandated to overcome effects of a history of discriminatory policies and to ensure the existence of meaningful equality of opportunity in the future.

Who are the disabled? We are 36 million americans of all ages; 9.5 million children; 15.2 million men and women in their prime working years; and 11.4 million senior citizens.

Racial and ethnic minorities are heavily overrepresented. Twenty-two percent of the black population; 20.6 percent of the Hispanic population; and 19 percent of the American Indian population are disabled.

Sixty-two percent of the disabled population who are able and willing to work are unemployed.

The unemployment rate for disabled Vietnam veterans is an alarming 87.7 percent compared to 8.8 percent unemployment for all Vietnam veterans.

And these disabled individuals who do find work earn less than nondisabled people.

A disabled white male earns on the average 40 percent less than his able-bodied counterpart; a disabled black female 88 percent less.

Combining these staggering statistics with the high cost of health care, and you have an indication of the harsh realities facing 36 million citizens.

But there is cause for optimism—the changing nature of the economy.

There is ample evidence which suggests that our economy is going through a radical change. We are slowly moving away from an industrialized base to a communications base. Some reports suggest that 75 percent of the jobs in the year 2000 have yet to be created.

Alvin Toffler, in "The Third Wave," popularized the concept of a change as dramatic as the demise of the agriculturally based society brought on by the industrial revolution. No longer is brute strength a prerequisite of work. This country may, in fact, undergo a real labor shortage in many technical jobs. New technological advances will completely alter the character of the workplace and make the full participation of those with varying abilities easier and easier.

We only have to expand our consciousness to be prepared to accept this expansive new world.

Legislation such as H.R. 370 has already been presented in several forms. I can attest to the success that those of us in Massachusetts who happen to be disabled have had because of the initiative of the Dukakis administration.

The State of Massachusetts has provisions for what H.R. 370 would do nationally. The Massachusetts Corporate Partnership Program, my current employer, now insists that corporations involve individuals with disabilities in their affirmative action programs.

This committee should not hear just our side of how urgently this legislation is needed, but should hear it from employers themselves. Two hundred and fifty corporations in my State are in pursuit of qualified disabled employees. They don't need Carnegie studies to tell them how productive disabled workers are, how attentive they are, or how motivated they are.

Government leaders don't need to be told how qualified individuals on SSDI are draining our economy. Putting people to work is not just morally right—it makes good business sense for our industries and governments.

In 1972, Senators Humphrey and Percy introduced a similar amendment that Congressman Moakley over 10 years later introduced in the House. Senator Percy made the following assertions:

"My action today represents a further effort to ensure that the handicapped will receive the basic rights to which every human being is entitled.

"It has been my hope that the concurrent resolution would begin a national commitment to eliminate the glaring neglect or our handicapped citizens. The amendment we are introducing today would realize this commitment, guaranteeing the handicapped equal opportunity to education, job training, productive work, due process of law, a decent standard of living, and protection from exploitation, abuse, and degradation.

"In essence, our amendment will give the handicapped their rightful place in society."—January 20, 1972.

As far as our human and civil rights as Americans, nothing has changed since the time of this statement.

One area in which we have made some progress is in the terminology we have chosen to classify those who may be different. The simple words "handicapped" and "disabled" in themselves set barriers—barriers in people's minds. They stress inability—rather than ability. I prefer to use the words "physically and mentally challenged," our handicap doesn't get in our way—why should it get in yours?

The 36 million physically and mentally challenged Americans represent an enormous largely untapped wealth of human resources.

As employers, consumers, and taxpaying citizens, we can make a major contribution to the growth of our economy and our society. Beyond all the statistics, all the political and economic rationales, all the appeals to corporate responsibility we could represent to you, there are millions of us challenged men and women, striving for equal citizenship, not charity.

I urge this committee to pass H.R. 370 and lead its fight on the floor. We are all one accident away from being challenged.

Mr. MARTINEZ. Thank you, Mr. Kennedy. Your statement of physically and mentally challenged brings to mind a statement made by a young man when I visited a Job Corp Center in Los Angeles. In asking the question if he was a high school dropout. His

retort to me was, "I am a forceout. This society forced me out, but I am going to force my way back in." It displays that positive attitude that I have seen with so many physically handicapped people. Their attitude is so strong and positive, you suddenly aren't aware that they are handicapped. They function just as well as you and sometimes—many times, better.

I think about the people that here in Congress, some of whom are physically handicapped, that are doing great service to the country. And I am inspired by that myself and grateful for the fact that they inspire me. I thank you for your statements.

At this time, I would like to ask Senator Kennedy if you have a statement to make?

Senator KENNEDY. Thank you very much, Mr. Chairman. It is the first time I have heard Congressman Moakley before. It is always wonderful to hear his words of inspiration. I have appreciated the courtesy of this committee inviting my son. I think you have heard from the testimony he is very serious about this issue. He has given it great time and attention, and he is very much involved in this program in Massachusetts. And I know how much it meant to him to be able to share those experiences with the members of the committee.

Mr. MARTINEZ. Thank you, Senator. With that we will recess for 10 minutes to go to the floor and vote.

Congressman Moakley?

Mr. MOAKLEY. Mr. Chairman, do you want me to return? We have a Rules Committee meeting you know.

Mr. MARTINEZ. Let me ask at this time, are there any questions of Congressman Moakley?

Mr. BIAGGI. Just a brief statement.

I would like to commend Congressman Moakley for his leadership and his authorship of this legislation. Clearly you address a problem that is further elucidated on by Mr. Kennedy. And I would like to make the observation that probably we are making in our minds and hearts, how wonderful an experience it is to see Senator Kennedy listen for the first time his son testifying before him. It is a great memorable experience in both your lives, I am sure. Thank you very much for our testimony.

Mr. MARTINEZ. Mr. Kennedy, would you remain so that the panel might ask you some questions when we return from the floor.

Mr. KENNEDY. Certainly.

Mr. MOAKLEY. I would like to anticipate one question, Mr. Chairman, one of the reasons I filed this thing—and I think it might be a question that because it is the fairness issue to all the citizens of our country, the cost benefit because these people will be getting off welfare roles, social security roles and start paying into Social Security and increase our tax dollars. And I think that it will be one of the best things that could happen to the handicapped person at this time for self-fulfillment.

Mr. MARTINEZ. I agree with you, Congressman.

Mr. GUNDERSON. Mr. Moakley, will you allow us to send you some written questions?

Mr. MOAKLEY. Positively.

Mr. GUNDERSON. Super. Thank you.

Mr. MARTINEZ. Thank you. With that, we will recess.

[Recess.]

Mr. MARTINEZ. We are reconvened now. And we have the introduction of the fourth panel, Mr. James Gashel, director of Governmental Affairs, National Federation of the Blind, Baltimore, MD—are you here?

OK, while waiting for him to arrive, we have Mr. Alex Rodriguez, Commissioner of the Massachusetts Commission Against Discrimination. Mr. Rodriguez, would you take a seat.

And Mr. David Pfeiffer, policy analyst, school of management, Suffolk University, Boston, MA—Mr. Pfeiffer, welcome.

Let's just wait a minute for the other panelist to join us. While we are waiting, the chair would like to announce that your prepared statements will be entered into the record, and you can summarize if you would like.

[Pause.]

Mr. MARTINEZ. Why don't we go ahead and get started and Mr. Gashel can join us. Well, here is Mr. Gashel now. Mr. Gashel, I just announced that your written testimony, if any, will be entered into the record, and you can summarize if you would like.

STATEMENT OF JAMES GASHEL, DIRECTOR OF GOVERNMENTAL AFFAIRS, NATIONAL FEDERATION OF THE BLIND, BALTIMORE, MD; ALEX RODRIGUEZ, COMMISSIONER, MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION, BOSTON, MA; AND DAVID PFEIFFER, POLICY ANALYST, SCHOOL OF MANAGEMENT, SUFFOLK UNIVERSITY, BOSTON, MA

Mr. GASHEL. Thank you, Mr. Chairman. Sorry, I was on the phone while you went out.

Mr. MARTINEZ. That's all right.

Mr. GASHEL. My name is James Gashel, and I represent the National Federation of the Blind, and I certainly appreciate the opportunity extended to us to be here today.

I think there is really no greater problem facing blind people in this country today than employment discrimination. It is not the discrimination that you are used to in the classic sense where, let's say, a social prejudice is unreasonably exercised to a detrimental extent with respect to a racial or an ethnic minority.

That kind of discrimination is mean-spirited and cruel, and, of course, it is wrong and it is against the law of our land. But we face an even worse form of discrimination than that. You see in the case of blind people and disabled people, preventing our movement through the work-a-day world is explained by motives of kindness and charity. It is the same companies that will give very generously to the United Way or maybe even hire a token handicapped employee that find very convenient reasons to lock their doors when any of the rest of us come knocking for jobs.

It was shocking to me recently when Montgomery County, MD, actually told the Federal district court that their Office for the Handicapped had not committed job discrimination against a qualified blind applicant for the director's job when that person applied for a position. And the position taken by Montgomery County was that there was no discrimination against the blind individual, because they chose to hire a deaf person instead.

That kind of logic and 50 cents will probably get you a cup of coffee down here in the cafeteria. And it is equally sure that it will perpetuate job bias based on handicap and consider the source an office for the handicapped.

In my written statement, I concentrated on the attitude issues, the social attitudes about blindness and disability in general because that is where discrimination begins with the attitudes. One example, keeping blind people from jobs which involve the exercise of judgment based on extensive review of documents and research. That is a fairly common occurrence with respect to an educated blind professional preventing us from doing those jobs.

Yet all of the facts show that blindness does not bar analysis of written documents and competent judgment, drawing conclusions upon the results of that analysis. It is just that most employers are sighted, and as sighted people they seem to believe that it is essential for a person to be able to see to analyze written documents. Now when this belief is translated into limitations on responsibilities or work assignments for the blind or worse yet, when it is translated into the outright denial of employment, we have got job discrimination against the handicapped in its purest form.

And notice I haven't talked about accommodation. Why? Accommodation is the exception, not the rule. We really have to begin with the social attitudes that lead to job discrimination and the erection of artificial barriers in our path. Once the traditional barriers of nonaccepting attitudes are removed, then if there is a need for altered work methods or some other kind of adjustment, and if that need is genuine to accommodate, then the accommodations will be easy and they won't be expensive.

You know the accommodation is the stalking horse of the opponents of H.R. 370 in past similar bills, but there is certainly not any solid evidence that there is any good basis for that kind of scare talk. Looking at it from the other way around, there is certainly present solid evidence that the American taxpayers are now spending billions of dollars each year just to provide subsistence for the blind and disabled who are discriminated against in attempting to secure fulltime, unsubsidized employment.

The total tab, including Federal, State, and local spending in this area, has been estimated to be over $100 billion annually. We estimate in our case that Federal savings of $8,000 annually would result if any one blind person is employed as opposed to be dependent upon cash assistance programs and other forms of support that the Federal Government provides.

I have never heard the opponents of H.R. 370 address that argument, let alone, speaking to try to refute. Amending title VII of the Civil Rights Act of 1964, as Mr. Moakley's bill calls for and would do, would also shore up the sagging patchwork of civil rights protection that we now are supposed to enjoy. For example, under section 503 and 504 of the Federal Rehabilitation Act of 1973 as amended.

Private suits under section 503 are virtually barred in the courts. To depend upon the Department of Labor to enforce, as your exclusive jurisdiction, as I have shown in my statement, the examples of a couple of cases there where two blind people were just dismissed

because of blindness, and the employer said so. And then the Department of Labor said it was OK.

Well, to depend upon the Department of Labor is absolutely ludicrous. Then under section 504, last year's Supreme Court decision in *Grove City College* v. *Bell,* means that most cases where it is hard to show that there may be a direct financial link can't be heard.

Mr. Chairman, I just want to conclude this statement quickly by quoting one of your colleagues and very good friend of ours in the House of Representatives, the Honorable Peter Rodino, chairman of the Judiciary Committee in the House, when he addressed an annual convention of the National Federation of the Blind on this very point. He, of course, is one of the foremost civil rights authorities as far as the law is concerned in this country. And he commented on sections 503 and 504 saying that even with an expanded view of them that they would never provide full protection against job discrimination.

And then he concluded by saying, "Amending title VII, however, would take care of this gap in the law. This is a step which must be taken and taken rather soon. Only by this change will you, the blind and disabled, gain true equality in the job market." And I just want to echo those statements and hope that you and the members of this subcommittee and the full committee and all of Congress will and that this can be enacted in the law. Thank you very much.

[The prepared statement of James Gashel follows:]

PREPARED STATEMENT OF JAMES GASHEL, NATIONAL FEDERATION OF THE BLIND

Mr. Chairman, my name is James Gashel. I am Director of Governmental Affairs for the National Federation of the Blind. My address is 1800 Johnson Street, Baltimore, Maryland 21230; telephone (301) 659-9314. I appreciate the invitation you extended for me to appear before this Subcommittee today in hearings on H.R. 370.

The National Federation of the Blind is the largest and most active membership organization of blind persons in the United States. Our membership exceeds 50,000, nationally. We have a grass-roots network of affiliates and chapters representing each state and every sizable population area. To understand the positions we take on matters before Congress (such as H.R. 370), you should realize that we represent the rank and file blind organized throughout the United States. Of course, there are many social agencies for rehabilitation services and adjustment training. Sometimes these groups also appoint themselves to speak out on behalf of the blind. But that is not the same as hearing from the blind, themselves. In contrast to these agencies, the National Federation of the Blind is the blind, speaking for ourselves. As one federal official, representing the Social Security Administration, once termed it: "NFB is the voice of the nation's blind."

Mr. Chairman, I have come today to talk to you about employment discrimination. That is the subject of this morning's hearing on H.R. 1294 and H.R. 370. You will hear other testimony on the first of these bills. My comments will deal primarily with the second. We support H.R. 370, introduced by Representative Moakley, because this bill seeks to install broadscale legal authority for combating employment discrimination based on handicap. The comprehensive way to do this would be by amending Title VII of the Civil Rights Act of 1964. So, that is precisely the objective of Mr. Moakley's bill. This is an objective we wholeheartedly applaud and enthusiastically endorse.

In the National Federation of the Blind, we often speak of ourselves as an "emerging minority." That is an important concept, and the words are carefully chosen. Today, we have actually come to think of ourselves as one of America's social minorities. Had this been the case in 1964 (when Congress was considering the Civil Rights Act we are now talking about amending), it might not, in fact, be necessary for us to have a hearing of this sort in 1985. The statute (Title VII) might have covered us from the beginning. Why it did not is more a commentary on the

development (or lack thereof) of our identity as a social minority twenty-one years ago than it is a statement about the facts our merits of whether or not handicapped individuals should be protected by various provisions of the 1964 Civil Rights Act. So we are actually urging Congress now to do something which (from a purely legal or rational view) should have been included in the original bill.

Historically speaking, it is a cultural phenomenon of longstanding that (to one degree or another) people who are not blind regard those of us who are as falling within a social class often labeled as the "afflicted." We hear that terminology from politicians, preachers, and others who proclaims that they want to help us "surmount" this great tragedy that we have "been forced to endure." The attitude expressed here is common about disabilities in general, not just about blindness. Terms used in describing us, such as afflicted, ill, decrepit, infirm, or incapacitated all convey the thought that anyone who has a physical function that fails to work right or not at all is less competent and less able to compete.

So with the often used labels of afflicted or infirm, we are slotted into a suspect category of society. There is an almost inevitable presumption of inability as opposed to ability. That's where discrimination normally begins. Isn't it revealing that Congress has taken so long in giving serious consideration to Title VII amendments that would protect against employment discrimination based on handicap? There may be lots of legislative strategy issues related to this, but strip them away, and it comes right down to a matter of basic understanding. If we are still thought of as patients or patient-like (afflicted, infirm, etc.), then it is hard for lawmakers to understand why the protections of Title VII to prohibit employment discrimination based on handicap should be extended. Even more, it is hard to imagine the need for such legislation to protect people who are presumed to be afflicted and truly unable to perform.

The critical point of this entire discussion is to direct your attention to the underlying attitudes about blindness or handicaps in general. These are the attitudes which bring us here today. From childhood we are taught that the blind cannot do most jobs. So if a blind person works and becomes self-supporting (even supporting a family) the individual is considered to be an exception, not the rule. As long as that is the case—that a working blind person is considered to be an exception, not the rule—then that is how long there will be job discrimination against the blind. It all comes down to a matter of social attitudes and how those attitudes shape employer expectations in considering a qualified blind job applicant.

Here is a case in point to think about. Several years ago, the Social Security Administration began an initiative to hire blind people for a certain job. What do you suppose? Do you think they would expect blind people to process claims or program the Social Security computers to issue checks on time and in the right amount? Why, no. The job that was found turned out to be about as routine as you could imagine. It was answering telephone inquiries to give information on fairly simple, regularly asked Social Security questions. And the blind people that were hired to do this job were mostly college graduates. It was considered to be a good opportunity for them. It was at least better than working in the sheltered workshop, earning wages below the federal minimum. But still, the blind people who got jobs answering Social Security's telephones were extremely limited in what they were allowed to do and in the extent to which they could advance to build careers. Soon discontent arose over these limits. A period of negotiations ensued spanning several years, and changes were finally made. Now blind people can actually evaluate claims and determine the award of Social Security benefits. This is the regular job of a Social Security Claims Representative. It is a responsible position and one which some officials of the Social Security Administration doggedly insisted blind people could not do. Imagine that.

The exclusionary employment practice I just described at the Social Security Administration ended only a few years ago after a protracted battle and a major effort on our part. Now, bear in mind that we also had a law to back us up. That is Section 501 of the Rehabilitation Act of 1973. Section 501 requires federal agencies to develop affirmative action programs for employment and advancement of qualified handicapped individuals. Regulations implementing Section 501 call upon the government to become a model employer of the handicapped. Still, we had to wage a major effort to convince the Social Security Administration that blind people can competently process and adjudicate claims. What would it have been like had there been no law to back us up?

In many instances, today, we still have no legal protection when discrimination in employment strikes. From the federal perspective, the best we can do is hope that the applicant or employee with a claim works for a company or a program that is somehow federally related. Section 503 of the Rehabilitation Act of 1973 as amended

(29 U.S.C. Section 793) requires federal government contractors and subcontractors to take affirmative action for employment and advancement of qualified handicapped individuals. The Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) reviews compliants brought by handicapped individuals under Section 503 and can order contractors and subcontractors to comply with the mandates of the law and the regulations at 41 CFR Part 60-741. OFCCP estimates that approximately 300,000 federal contractors and subcontractors fall within its jurisdiction under Section 503.

As for the federally assisted programs (in contrast to federal contractors), each federal agency distributing financial aid is responsible for assuring that those who receive money from the government conduct their programs without discrimination based on handicap. The Supreme Court in *Conrail vs. Darrone* has held that employment discrimination is a protected right and furthermore that Section 504 includes a private right of action. But the Supreme Court's decision last year in *Grove City College vs. Bell* has placed severe limits on the scope of Section 504 coverage in employment discrimination and other cases that formerly could be pursued.

So federal protection under relevant laws is, at best, quite limited. Even worse, there appears to be a serious inclination on the part of responsible federal authorities not to enforce the laws that do exist. In the case of an action arising under Section 503, competent and aggressive administrative enforcement is absolutely essential if the rights of handicapped individuals are to be secured. I say it is absolutely essential because most rulings hold there is no private right of action to use Section 503 in challenging the acts or practices of a federal contractor or subcontractor. Apparently, according to a string of decisions in different circuits, the courts have decided that the Department of Labor has exclusive jurisdiction to supervise affirmative action compliance by federal contractors and subcontractors. That is a fair representation of the current status of the law with respect to Section 503. Except for the Grove City decision, which in many respects has paralyzed Section 504 enforcement, individuals with claims arising under that statute may fare somewhat better in the courts if not at the administrative agencies.

Congress clearly intended Sections 503 and 504 of the Rehabilitation Act to be important weapons in combatting employment discrimination based on handicap. However, the protections of these statutes have now been eroded to a very considerable degree. If is not enough for a handicapped plaintiff to bear the burden of proof on claims of employment discrimination. That is hard enough let alone doing so under conditions that are similar to entering the boxing ring with both hands tied behind your back. Here is only one example to show that this analogy does not overstate our current legal predicament.

In the Spring of 1981, two blind people (Lola Pace and Roger Smart) were summarily terminated from their employment as x-ray technicians with a defense contractor in Wichita Falls, Texas. Each had been hired to develop x-ray film in a procedure designed to check on the accuracy of certain parts used in turbine engines. Then it later developed (in May, 1981) that workflow demands required a shift in job duties. A layoff was not necessary. Most employees formerly doing x-ray work were reassigned. But the blind employees were released. That was the overall situation. Here is a letter written to one of the employees which describes clearly the employer's intentions. Note the clear admission that blindness was the reason for the termination.

HOWMET TURBINE COMPONENTS CORP.,
WICHITA FALLS DIVISION,
Wichita Falls, TX, May 11, 1981.

To Whom It May Concern:

Mrs. Lola Pace was employed by Howmet Turbine Components Corporation from February 23, 1981 to May 9, 1981.

She was employed in our x-ray dark room as a noncertified x-ray operator.

It was necessary to reduce the number of people in the x-ray department by four because of a downturn in our business. To balance our workforce and utilize our human resources efficiently, least senior employees were transferred out of those departments that had more people than our business level would justify. All of the surplus people in x-ray, except two blind x-ray operators, were transferred to our cleaning department—an area short of people.

All sections of the cleaning department have rotating mass, power pak grinders, cutting blades, etc., and the only area where Mrs. Pace could work safely is at the sand blast cabinet. This operation; however, requires a sighted person to inspect the parts and be sure they are sand blasted adequately.

Since we could not transfer Mrs. Pace, because of her handicap, the decision was made to terminate her employment. Our other blind operator was also terminated for the same reason. Mrs. Pace was a probationary employee and the termination was in no way related to lack of performance. Her work was satisfactory, her attendance excellent, and were she able to be transferred to cleaning, would still be in our employ.

Sincerely,

HAL WILSEY,
Personnel Manager.

This is a case of outright, flagrant discrimination clearly based on blindness, if I ever saw one. The contractor's personnel officer admits straight out that blindness was the exclusive reason for the termination. So the question arises, were there really no other jobs in the employer's plant that people being blind could do? Everyone else who was sighted received a transfer. Can we presume that those employees were more qualified for the jobs they were transferred to than either of the two blind employees would have been? I think not.

But, what do you know? Upon investigation of a complaint we filed, the United States Department of Labor, OFCCP, determined that there was no discrimination here. There were according to the "results of investigation" really no jobs that either of these blind individuals could have been transferred to. Safety was cited as the prime reason. Then we asked for a national office review to be conducted at the Department of Labor's headquarters here in Washington. That yielded the same, unhappy result. Next we went to federal court. We could not sue the employer under Section 503, because of an existing court ruling in that jurisdiction holding that there was no private right of action. So the best we could do was to file suit in the United States District Court for the District of Columbia challenging the case handling (or mishandling, as we charged) by OFCCP. We lost. It was not a question of the merits. The case never got to that point. The court held that OFCCP has prosecutorial discretion in its review of complaints and the decisions it makes upon investigation. The manner in which the instant case was handled met the standards of review and feel within OFCCP's discretion. Case closed.

So two blind people were forced on welfare by a federal contractor even though there is a law requiring that contractor to take affirmative action in the employment and advancement of qualified handicapped individuals. Moreover, the agency charged with enforcing that law adopted the position of the company, without the slightest inclination to do otherwise. There was no option for the blind people involved but to depend upon the administrative process which brought them to a frustrating and completely unsatisfactory conclusion. Each of them was denied employment under a federal contract without due process. If nothing else, an amendment to Title VII of the Civil Rights Act of 1964 would have provided the opportunity for a full and fair adjudication of this matter before the courts if not through an administrative hearing before the Equal Employment Opportunity Commission. As it is, there was no opportunity for such a proceeding, and the outcome (favoring the employer) was virtually inevitable from the start.

It is tempting to give a catalog of cases that point up the need for stronger laws to combat employment discrimination based on handicap. Paul Flynn was a teacher of twenty-one years' duration at Archbishop Curley High School in the Catholic Diocese of Baltimore. His students respected him and learned their lessons to the same extent as with any sighted teacher at Archbishop Curley. So Paul Flynn had few problems until sometime in 1983, shortly after the hiring of a new principal for the high school. Then all of a sudden it became sacrilegious for Archbishop Curley to have a blind person teaching the correct usage of the English language to sighted students. According to the principal, Mr. Flynn committed such sacrilege as failing to write on the blackboard, not using bulletin boards, and lecturing to his classes rather than communicating the concepts through a multimedia approach. Also, Paul's use of his long white cane to guide him through the hallways of Archbishop Curley High School became a sensitive point and ultimately a matter of disfavor with the school administration. So he was summarily terminated two years ago. As expected appeals through the ecclesiastical court in Baltimre have proven to no avail.

Dawnelle Cruze is a Red Cross worker in Norfolk, Virginia. She helps people who are in need of disaster assistance. She is skilled in mobilizing resources and aid to people in need, and Dawnelle Cruze is totally blind. She is also the most senior social worker at the Red Cross unit in question. But when an opportunity for a supervisory position arose sometime back, Dawnelle's superiors found that she would not qualify for a promotion. Her blindness was not stated directly as a factor, but the implication was there all the same. What did happen is that a supervisor for

Dawnelle and the other social workers was hired from outside the current workforce. But what then? Dawnelle Cruz (the only social worker who was blind and the one with the most seniority) was asked to train the new supervisor. What an irrational position for the employer to take. The blind social worker was not qualified to be a supervisor but qualified enough to train the supervisor who was hired to supervise her. Now the supervisor whom Dawnelle trained has left. But do you suppose Dawnelle Cruz will again be considered for a promotion to the supervisory job in question? The answer is no, the position was abolished. And they say there is no discrimination. Ask Dawnelle Cruz and you will see.

Cherie Heppe of Connecticut was hired last year to make employment contacts for a federally-aided job training program serving of long-term, hard-to-place unemployed people in Hartford. Cherie was well-qualified for the job by training and experience. She was given a date to report to work and told the job was hers. But when she called to make final arrangements (a few days before reporting to duty) there was no job for Cherie and no longer any commitment to hire her. The employer had found someone else (not a blind person) who would be starting soon, so Cherie's services weren't needed anymore. And they tell us there is no discrimination.

These cases are joined by hundreds, even thousands, and the stories of each of them are equally compelling. They share a common thread—an act of discrimination with little recourse to challenge it under either federal or state law. This is why we support Mr. Moakley's bill to amend Title VII in such a way that employment discrimination based on handicap would be prohibited. It is true that giving the Equal Employment Opportunity Commission and the courts more jurisdiction in this area would not be a panacea. We are not naive enough to think that it would put an immediate end to all forms of employment discrimination based on handicap. But despite the continuing problems inherent in any enforcement of these nondiscrimination laws, the fact of their existence and the voluntary compliance which flows from it cannot be discounted. Congress should be guided by an understanding of the need and an appreciation for the benefits to be derived from a statute that would encourage far greater utilization of the skills and potentials of qualified handicapped individuals.

Considered in economic terms, each disabled or blind individual who remains outside of the workforce receives subsistence income from the federal government in the form of direct money payments and in-kind services. As a matter of national policy, we do not let needy blind or disabled people starve or otherwise exist without shelter and medical care to meet basic minimum standards for human decency and care. So the taxpayers of our country will pay for these benefits in the case of any blind or disabled individual who cannot find employment enough to become self-supporting. Conservatively estimated (based on our experience), the average individual will receive benefits amounting to $6,000 per year to obtain necessary food, clothing, shelter, and a reasonable standard of medical care. For given individuals, and those with dependents, the amount will be considerably higher than $6,000 per year. But the average is a conservative one.

Now if the blind or disabled individual works, as opposed to receiving publicly financed benefits, eligibility for public support will stop. Moreover, working people pay taxes, whether blind, disabled, or not. These payments of federal income tax and FICA contributions for Social Security, will normally amount to approximately $2,000 per year for someone with an average starting salary. Considering that fact, alongside the $6,000 which will no longer be paid to the working blind or disabled person, there is net savings of $8,000 to the U.S. Treasury for each such individual who works as opposed to subsisting at public expense. This does not begin to calculate the worth of the individual to his or her family or to the companies who benefit from the labor of qualified handicapped individuals. Those advantages are very real but less easily quantified.

If H.R. 370 can stimulate jobs for, say, 10,000 people in the year or two years following its enactment, that would yield a savings of close to $100 million in federal outlays. The number of 10,000 new jobs is an extremely conservative estimate considering the millions of unemployed but qualified handicapped. Based on data from the Social Security Administration and other sources, we estimate that only 30,000 blind people are employed to any significant degree. That is out of a total blind population of one-half million or more. So the potential for new jobs among blind people alone is great.

The savings which I have just projected would more than offset any additional cost in case handling that might occur with more cases pending before the Equal Employment Opportunity Commission. Five years ago, the Congressional Budget Office (CBO) estimated that, under a similar bill then pending in the Senate, enactment of a Title VII amendment to protect the handicapped from employment dis-

crimination would expand the EEOC caseload by about 11,000 cases annually. The cost in EEOC resources (when the legislation was expected to be fully implemented) was projected at $21 million. (See Senate Report 96-316, 96th Congress, First Session, A Report to Accompany S. 446, the Equal Employment Opportunity for Handicapped Individuals Act, page 17.)

Mr. Chairman, the Honorable Peter Rodino, Chairman of the House Judiciary Committee, has joined us in giving strong support for an amendment to Title VII. Mr. Rodino is one of the foremost authorities on civil rights law in our country. In speaking before the National Federation of the Blind during our annual convention, Mr. Rodino said and I quote "I fully support the Federation's proposal to amend Title VII of the Civil Rights Act to include the handicapped. . . . Even with an energetic and an expanded view of the law, Sections 503 and 504 of the Rehabilitation Act will not provide full employment opportunities for all. These sections do not reach the 700,000 employers who receive no federal dollars or federal contracts, who get no federal assistance, who remain substantially free from requirements to avoid job discrimination against the blind and disabled. Amending Title VII, however, would take off this gap in the law. . . . This is a step that must be taken rather soon. Only by this change will you gain true equality in the job market."

Mr. Chairman, full employment rights for handicapped individuals should not be further compromised by legislative considerations of expediency that argue for maintaining the status quo. 1985 should be a year of full integration for blind and disabled people to enter the mainstream of competitive life. The questions are, will there be oportunities for employment of these people who want to use their talents toward the expansion and betterment of our national economy and will the opportunities be fair? It is obviously not possible to resolve all of the issues related to these questions through a single legislative act designed to prohibit employment discrimination based on handicap. However, that would be an important and impressive start for our country to make this year. Mr. Chairman, it is not too soon to begin that effort. You have done so in this hearing today, and we appreciate it. Now let the word go forth to the Congress as a whole. The time has come to ban employment discrimination based on handicap. When that is done there will no longer be a subclass of employees who lack the protections which Congress has already extended to others. I thank you.

Mr. MARTINEZ. Thank you, Mr. Gashel.

With that, we will turn to Mr. Rodriguez.

Mr. RODRIGUEZ. Thank you. My name is Alex Rodriguez, and I am the chairman of the Massachusetts Commission against discrimination which is the agency responsible for enforcing Massachusetts civil rights law.

I have submitted a written statement to the committee, and I won't repeat it. But I want to begin at the end of my written statement to indicate that under our law we recognize temporary, permanent and developmental disabilities, including cancer, which was the subject of the previous panels as qualified under handicap protection, and that we have been enforcing that law seriously for the last year. And I found it surprisingly less cumbersome, less taxing on staff and easier to handle than the previous litany of title VII protection that we duplicate at the State level.

And I want to emphasize that, Mr. Chairman, because I do think, as previous speakers have said, that this is a very phobic society that we live in; people raised with images that were given to them by parents who experienced life at a different time to different realities

I don't fault people for their discriminatory attitudes in every instance. We develop them for different reasons. We live in different regions. We are exposed to different types of people.

I think the bottom line in all antidiscrimination law is that we as a society if we are going to maintain the types of freedom we have come to enjoy have to bear the simple burden of dealing with every individual simply as that individual, and not to allow our-

selves, especially in our public behavior, to begin to get caught up in class definitions of people which have no place in our logic system and this is basically at the gist of everyone's discriminatory attitude.

It is that silly mental illness—I call it a mental illness, Mr. Chairman, of attribution. It is a perception problem. We attribute to those around us behavior and you know, Mr. Martinez, as I do, being fellow Latinos, how we have had to experience that in our lifetimes. People attribute to us things that are just so misplaced. They are offensive.

They are so much more offensive when we try to carry this double attitude of—again in Spanish—the "adios mio" attitude: There goes this poor fellow, my poor fellow citizen. I want to do so much for him or her except employ them, except allow them around me.

This is a terrible contradiction. The passage of H.R. 307, the amendment of title VII, will not only be helping the handicapped community or those physically challenged or mentally challenged, as young Ted Kennedy said. It really will be helping the total population in America. It will be helping us one more step to get rid of this perception problem, the basis of all this insidious discrimination in our society.

We in Massachusetts ask the committee to consider as it takes this amendment along, skipping some initial court action that will come from amending title VII to include the handicapped, as Mr. Moakley's legislation presents itself, by considering some words carefully from our legislation. And the two major issues deal with qualified handicapped individuals who are capable of performing an individual activity effectively and the burden that business would have to carry if you do so of showing undue hardship to themselves if they eliminated someone because among reasonable people you and I can agree that there would be some people so defined by nature, by accident or whatever, that they are just not capable of performing certain tasks.

You or I are not capable of performing certain tasks. I am not going to play in the NBA. That is simple. I doubt if you are. I don't think either of us would be offended by the reality that we have been eliminated from that.

But both of us, if we felt we could, would want the opportunity to demonstrate that we could and we would expect that person who participated in the elimination process to explain to us why we didn't do it, why didn't we do well, to carry some burden.

We don't think that that is unfair on either side. And we have seen that it works very well in carrying out the legislation in Massachusetts. It comes to the issue of reasonability.

Let me give you an example. The one I put in my legislation was clearly a trained typist who is wheelchair-bound but can type. But there are some physical realities about a wheelchair and it gives a different height to that person in the normatively thought about seat for a secretary in an office.

The simple accommodation there is finding the appropriately sized desk and arrangement for that secretary. That is not unreasonable.

But let me give you another example. And I shared it with David as we came in on the plane this morning. At what point would you place a burden on a particular employee to ramp an entrance of an old building that wasn't physically barrier-free, and at what point if you had a particular individual who had a developmental disability, muscular dystrophy, for instance, in which the impairment of the muscles of the arms were dwindling, at what point would you ask that individual to purchase through insurance or some other means a motorized chair, therefore, carrying the burden on that side as opposed to continuous accommodations on the other side?

Those are the questions that come up in reasonability tests. So we would ask you to consider that, and my testimony speaks to that.

The second thing we ask you to be careful about and to consider, since we found it effective and it does work, is the issue of preemployment physical history and health information. As you heard, Congressman, as has been stated earlier, there are some of our old notions in our old forms which still linger around our society and ask questions that are nobody's business until they become somebody's business.

In Massachusetts what we have done, and we have struggled with our own department of personnel administration to change its rules and we are coming to a settlement this month, in fact, and all those rules will be changed. Today there should be no questions in terms of your physical capacity before the offer of a job.

And then the burden should still fall on the employer to show why anything that would come from a medical exam would deny you or I a particular job. You have heard the young police officer from New York speak.

We have to eliminate that type of thinking and the way that you eliminate that is by inserting provisions that say preemployment exams are illegal until there is an offer of the job. Then an employment exam can be made now.

We have an interesting case in Massachusetts where in our registry inspectors who go around checking cars for inspection stickers, et cetera, they have tried to deny a one-eyed individual who has a driver's license, who has a weapon's license, who has all the other qualifications, who scored very highly in the exam, et cetera, they tried to deny him a position.

He is winning that position through the adjudicatory process. The funny thing about this was there are other registry examiners who have injured eyes through their employment history with the registry and are still employed simply because they had the job beforehand. Their impairment is no different, and that type of illogic has to be eliminated.

The best way to do it is to not allow preemployment medical exams until there is an offer of a job and then to only allow and to shift the burden to the employer as to why any particular medical occurrence would handicap that person from performing a job.

I think that that is the appropriate place for the burden, not on the part of the individual. Given those two rules, I think that we would skip a lot of litigation at the Federal level and enunciating it as we have done in our written statement would help us along much quicker to our task.

The last thing, and equally important, and it has been stated here in many different ways, that I inserted in our testimony that we felt was very relevant, was that every piece of data about the employment history of, "handicapped people", in the work place indicates that you are getting a better deal for your dollar.

We used and we quoted "Equal to the Task", the DuPont study that indicated with such glowing high numbers how much more beneficial it is to, in fact, discriminate in favor of people with handicaps.

We have now had 1 year to try the law in Massachusetts. It has become 5 percent of our total case load, the handicapped clients; 10 percent of our employment cases; and we find that we have higher settlement rates in this category. I can give you specific numbers. I dug them out last night.

We have, as I said, much more amicability, it seems, to want to settle these problems between the employer and the employee than we do in other classes that come to the commission and that we have not found it as cumbersome as we thought.

We do still have problems of defining temporary disability and what reasonable accommodation is. That will come along as the law ages.

But, again, I want to emphasize that I feel the most important benefit of passing title VII which will not be expensive, by the way, to the Federal Government or employers of anybody else, and there is plenty of data to indicate that, but the most important benefit is not only going to be toward those qualified handicapped applicants for employment, but to the society because it is going to change people's way of thinking, especially in those areas where there is a warped sense of perception.

Thank you, Mr. Chairman.

[The prepared statement of Alex Rodriguez follows:]

PREPARED STATEMENT OF ALEX RODRIQUEZ, CHAIRMAN, MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

My name is Alex Rodriguez. I am the chairman of the Massachusetts Commission Against Discrimination which is the agency responsible for enforcement of the Massachusetts civil rights laws (M.G.L.C. 151b, et seq.).

On March 6, 1984 this law was amended by the Massachusetts Legislature to give the commission authority to investigate and adjudicate complaints of discrimination in employment against "qualified handicapped" persons.

Our experience in Massachusetts, we believe, gives us a unique insight into the need for the enactment of legislation nationally which would give handicapped individuals throughout the country the protection from discrimination, which currently exists in only a few States.

Consequently, it is my privilege today to testify in support of H.R. 370 which would amend title VII of the Civil Rights Act of 1964 to make discrimination against handicapped individuals an unlawful employment practice.

The passage of the Civil Rights Act of 1964 signified a recognition by the citizens of this country that an employer's decision to hire or promote an individual should be based upon that individual's ability to perform the job and not upon class-based generalizations and stereotypes.

We have seen the impact that title VII has made over the last twenty years in removing artificial barriers that previously restricted minorities and women from receiving the equal employment opportunity that is now regarded as a fundamental right in this country.

The time has come to extend this fundamental guarantee to handicapped workers whose contribution to society has been unjustly restricted by employer misconceptions and ignorance.

Our experience in Massachusetts has shown us that this is a task which should be done and which can be done by the enactment of legislation which is designed to address employment practices which have served as artificial barriers to the employment of qualified handicapped workers.

Our experience has also shown us, however, that in order to be effective, legislation in this area must reflect the realistic problems that will arise as employers and employees make the transition that is necessary to provide employment opportunities to these workers.

H.R. 370, as currently proposed, would amend title VII to simply prohibit discrimination in employment against a qualified individual solely on the basis of a handicap.

The Massachusetts discrimination law, however, has two additional provisions which we believe have been very effective in targeting key employment practices which have historically operated to exclude handicapped workers.

The first provision makes it unlawful for an employer to discriminate against an otherwise qualified handicapped individual if the individual is "capable of performing the essential functions of the position involved with a reasonable accommodation to his or her handicap unless the employer can demonstrate that the accommodation required to be made to the physical or mental limitations of the person would impose an undue hardship to the employer's business." [M.G.L.C. 151b, , 4(16)]

The "reasonable accommodation" standard, we believe, is critical to effective implementation of equal employment opportunity for the handicapped because it requires the employer to make the minor adjustments which are realistically necessary for the adaptation of the handicapped worker to his or her work environment.

The reasonable accommodation which must be made typically requires little cost or effort by the employer. The failure to make the accommodation, however, will result in the predictable exclusion of persons who have certain disabilities.

For example, employment of a typist who is confined to a wheelchair may necessitate that an employer utilize a raised desk or make other minor adjustments to the physical environment of the employee's work area to accommodate this handicap.

We emphasize that the employer may still set high standards for the proficiency level of the typist. However, under Massachusetts law, the employer could not refuse to hire a worker who has the best qualifications simply because employment of the person will necessitate a minor adjustment in the work environment to accommodate the individual's handicap unless the employer can demonstrate that the accommodation will impose an undue hardship on the employer's business.

We believe that there is a trend of State courts and agencies construing handicap discrimination laws to incorporate an obligation of the employer to make reasonable accommodation to an applicant or employee's disability limitations even where no accommodation language expressly appears in the statute. [E.G. Cal. admin. code tit. II, § 7293.9 (1980)]

However, in considering the importance of such a provision to the achievement of meaningful employment opportunity for the handicapped, we strongly urge that explicit reasonable accommodation language be added to H.R. 370.

The other provision that appears in Massachusetts law but which is not contained in the current version of H.R. 370 prohibits an employer from making a preemployment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or severity of the handicap, except that an employer may condition an offer of employment on the results of a medical examination conducted solely for the purpose of determining whether the employee, with reasonable accommodation, is capable of performing the essential functions of the job. [M.G.L.C. 151b, § 4(16)] This provision seeks to eliminate the employment practice of requiring application whether the information is related to the functions on the job in question or not.

Such a broad pre-employment inquiry rarely provides the employer with information that is necessary to the employment decision, but the information disclosed frequently disposes the employer against hiring an individual with even a minor medical problem.

The MCAD's experience in enforcing this provision confirms that this practice is widespread and that it results in the systematic exclusion of qualified workers due to the disclosure of medical problems which would not otherwise be readily apparent to the employer. Over the past year, a clear majority of cases filed with the MCAD have involved complaints of discrimination because of such hidden disabilities as epilepsy, back injuries, and diabetes.

Our investigation of these cases has revealed that, more often than not, an employer will refuse to hire such individuals for any position because of the employer's misconception of what limitations, if any, are imposed on the worker by such a med-

ical condition and by its fear, usually unjustified, of skyrocketing insurance rates and safety hazards.

A recent study conducted by E.I. du Pont de Nemours & Co. clearly demonstrates, however, that the employers' fears are without basis in fact.

The study finds no increase in compensation costs and no lost-time injuries due to employment of handicapped workers.

Further, ninety-eight percent of the handicapped employees rated average or better on safety, and more than half of those rated above average. "Equal to the Task, 1981 du Pont Survey of Employment of the Handicapped", 6–9 (1982).

Additionally, the du Pont study showed that ninety-one percent of the disabled rated average or better in job performance, ninety-three percent rated average or better in job stability, and seventy-nine percent rated average or better in attendance.

Since it is clear that employment decisions affecting the handicapped are too often based upon myth rather than fact, we believe that enforcement of handicap discrimination law requires that the law restrict the medical information which employers may elicit prior to an offer of employment.

We believe the pre-employment restriction contained in the Massachusetts law has been effective in eliminating unlawful screening practices.

Accordingly, we suggest that H.R. 370 be amended to include the same or a similar prohibition.

While we are proud of the progress that the Commonwealth has made in eliminating discrimination against handicapped workers in the State, we recognize that meaningful employment opportunity for handicapped cannot be achieved unless the Nation as a whole embraces this goal.

Enactment of Federal legislation in this area will provide uniformity and consistency to this effort. Any tax dollars which must be expended to enforce this law will easily be offset by the savings which will result as job opportunities are created for persons who have previously been forced to rely upon public funds for survival.

For all of these reasons, we support enactment of H.R. 370.

Finally, before closing our comments we note that in addition to H.R. 370, the committee also has before it H.R. 1294, which is a bill to amend title VII to bar discrimination against a person on the basis of cancer history.

Although we agree that discrimination of this nature should be prohibited, we believe that persons who have a history of cancer would be considered qaualified handicapped persons entitled to the protection that enactment of H.R. 370 would provide.

Mr. MARTINEZ. Thank you, Mr. Rodriguez.

The brochure that you have, "Equal to the Task", are you submitting that for the record?

Mr. RODRIGUEZ. Yes, Mr. Chairman. We will get it to you.

Mr. MARTINEZ. Thank you.

Mr. Pfeiffer.

Mr. PFEIFFER. Thank you, Mr. Chairman.

My name is David Pfeiffer. I am on the faculty of Suffolk University in Boston, and my testimony today is presented in the memory of Larry Fraze who died in April of this year. Larry should be the one sitting here because his life involved both the problem that we confront today and the resolution of it.

And, Larry, as was said earlier, had cystic fibrosis. At the time that Larry died he was on the staff of the Boston Center for Independent Living, which is the organization responsible for me being here today.

He was concerned with advocacy and employment problems of disabled persons, and he, himself, as all disabled persons have, he experienced job discrimination due to his handicapping condition.

In 1979 he graduating magna cum laude from Suffolk University, from my university, with a bachelor of science degree in government, and as was said earlier, worked during his senior year as an intern in Congressman Moakley's office.

How many people we are talking about when we talk about disabled persons in the work force? I want to give you some figures and I base it upon a 1978 survey which is the most recent one which has the adequate figures for comparison.

In 1978 the work force was something like 127 million people and of those 127 million, 21 million people in the work force, as traditionally defined, had some type of disability. Of those, 8 percent—that is, about 10 million were severely disabled; 4 percent of the work force or 5 million had an occupational disability; and 5 percent, or something like 6 million, had a secondary work limitation.

These figures add up to 17 percent of the work force as traditionally defined, 17 percent are disabled persons. Not all of them are working, as I will show you in just a moment.

I collapsed the two categories of occupationally disabled and those with secondary work limitations into one group and call them partially disabled. Of the severely disabled, the approximately 10 million persons, only 6 percent are now working fulltime and the same percent, 6 percent, are working part-time.

Eighty-eight percent of those 10 million people who want to work, who have the skills, who have the ability, who have the time, and who have been seeking jobs, some of them have already given up—88 percent of them are not working.

Of the partially disabled, 56 percent work full time; 16 percent part time; and 28 percent are not working. Again, some of those have simply given up the search. What is the reason for this high amount of unemployment, especially among the severely disabled.

Well, it is due to simply plain prejudice on the part of some—I want to emphasize some employers. There is a couple of surveys the U.S. Department of Labor did in late 1960. They surveyed—the reason they haven't done a recent one is because people tend not to admit to prejudice as much as they did back in the 1960's.

But they surveyed 347 New York City firms. Sixty-eight percent of them said as a matter of policy—said publicly, 68 percent of them said as a matter of policy they would not hire someone with a vision impairment and 50 percent said that as a matter of policy they would not hire someone with cerebral palsy.

The Department of Labor also did a nationwide survey of over 1,200 firms. Seventy percent of these firms said that as a matter of policy they would not hire someone with epilepsy; 48 percent said as a matter of policy they would not hire someone with an orthopedic handicap. And that discrimination still exists today.

Let me give you four examples of that discrimination. All these are Massachusetts examples. I am from Massachusetts.

There was a hearing impaired nurse who was fired from her position in a hospital. Her disability keeps her from using the phone unless it is adapted with an amplifying device, which the phone company quite readily supplies.

Otherwise, she had no other difficulty in communicating with patients and communicating with the staff. She told her employer about her disability during the job interview and after 2 weeks on the job she was informed that her disability was "worse than thought", and she was fired.

She was told that as a result of this she would have difficulty in general, she would not be able to carry out her job because of her

problem on the phone. But the hospital refused to discuss any possible accommodations.

She now works for a temporary agency. She regularly performs nursing assignments in hospitals on a temporary basis with no problems. And although she is continuing to look for a full-time nursing position, she hasn't been successful yet.

A second case, a technician working in the laboratory. He carried out his job very successfully for 2 years. He had a seizure on the job.

And his employer immediately fired him citing safety concerns. He had never had a seizure before. There are simple safety procedures which could be followed, but the employer simply refused to consider any other options.

A third person who had diabetes went for an interview and was promised a sales job during the interview. The next day he came back, he was doing the paperwork related to the medical examination. The questionnaire contained a statement that sales persons must be able to lift 70 pounds and stand for long periods.

But it also stated that any person with diabetes receiving insulin would be restricted in activity and could not be hired for a sales position. This man could lift 70 pounds, could stand for long periods of time, had experience in sales, was physically fit, but he was refused employment.

And one more example of discrimination. A friend of mine, David Moran of Everett, MA is an advocate for disability rights. He is a producer of a radio show on disability issues called "Temporarily Labelled". That is able-bodied people are temporarily able bodied. And it goes over the MIT community radio station in Cambridge.

He was born with spina bifida. He was the first handicapped student in the Everett schools. He was the first to graduate from high school in Everett without being forced to either have home tutoring or to go off to some private school.

After graduation he went to broadcasting school and he worked at some stations and radio stations in Maine and Massachusetts. But the station where he was working, there was a change in management.

Three people were fired by the new manager, a minority and two disabled people, including David.

David undertook a job search for a position in the field of broadcasting. He sent one station a tape. They wired him. They sent him a telegram to call immediately. They wanted to see him as soon as possible. So he called them up and made a time for the interview. The station manager said they would be "talking money".

When he arrived there was a long flight of stairs. He climbed up the stairs. When he introduced himself to the receptionist, she gave him sort of a funny look. The manager came out, looked at David's legs and looked at his crutches, invited him into the office, gave him a ten minute interview and David left with no job.

He tried other lines of work for awhile. He worked for a company that I won't name because it is a true scam. The company hires disabled people to sell lightbulbs over the telephone. It is a scam, because, first of all, the product is inferior, and secondly, they rip off their employees in what they pay them.

The employees make the calls and they say, quote, "I am a handicapped worker for . . ."—and the company will go nameless. "This is the only way that I can make a living." David noticed that all the phone callers were disabled. All of the office management were not disabled.

He applied for a position in the office, a management position. And during the interview, right away he knew he wasn't going to be considered because they never talked about working in the office.

Instead, the interviewer told him to go to his parents. He had been living at home for several years. He was trying to be financially independent. Told him to go to his parents, get telephones installed in the basement of their house, and then he could find disabled people to work making those phone calls, selling those light bulbs.

And when he said, well, where am I going to get the capital to do this. He simply was told, oh, your parents will help you.

Well, being persistent, he found another job. But he got laid off during the recession. He finished a bachelor's degree in psychology and he has been very active in his church and even received an honorary doctor in divinity for the work that he had done with his church.

But presently he is selling home and personal care products out of his home, grossly underemployed.

What these stories say is that our society is incurring great cost in terms of unemployed and underemployed handicapped workers. The cost in terms of wasted human potential is large, but the cost in terms of tax revenues is staggering.

Over $40 billion will be spent this year by the Federal Government for income maintenance programs for disabled people, and over $60 billion will be spent by State, local. and private agencies—State and local governments and private agencies on income maintenance programs for disabled people.

I am not saying that all of that $100 billion a year would be saved if House bill 370 was enacted. But a lot of it could be saved by removing barriers to employment of handicapped workers and there would be additional tax revenues generated by the at least 12 million newly employed disabled workers.

So let me just conclude by saying what Larry Fraze would say if he were here today, what David Moran said to me when I talked to him earlier this week, I urge the committee and I urge Congress to pass House bill 370. It is a public policy which is just. It is a public policy which is fair, one which is necessary, and one which will return the tax revenues that are sorely needed today.

Thank you.

[The prepared statement of David Pfeiffer follows:]

PREPARED STATEMENT OF DAVID PFEIFFER, PH.D., SCHOOL OF MANAGEMENT, SUFFOLK UNIVERSITY, BOSTON, MA

Mr. Chairman and members of the Committee: My testimony today is presented in the memory of Larry Fraze who died on April 5 of this year. Larry should be the one sitting here because his life involved both the problem we confront today and its resolution. Larry had cystic fibrosis which usually kills people by the age of 30 or sooner.

At the time of his death Larry was on the staff of the Boston Center for Independent Living, the organization responsible for my being here today. He was concerned with advocacy and employment problems of disabled persons. He, himself, as all disabled people have, experienced job discrimination due to his handicapping condition. This problem is the one we confront today and what H.R. 370 is designed to help resolve.

In 1979 Larry graduated magna cum laude from Suffolk University with a bachelor of science degree in government. During his senior year he worked as an intern in Representative Joe Moakley's office here in Washington. He did research on legislation involving aspects of discrimination against disabled people. As a result of that intership he obtained further training to become a paralegal. At the Boston Center for Independent Living Larry did advocacy for members. For example, he would assist people who were having problems with Social Security benefits. He was also the staff person for the Employment Committee, which he helped establish, and the Human Rights Committee.

Larry knew that disabled people could hold jobs and be active citizens like everyone else. He coordinated a Voter Registration Drive aimed at disabled citizens in 1984. During this time he worked closely with the Office of Governor Michael Dukakis, the Office of Secretary of the Commonwealth Michael Connolly, and the Boston Commission on the Handicapped. Larry was an active citizen of his community as Treasurer of the Westwood Democratic Town Committee.

Discrimination against disabled persons in employment was a problem which Larry Fraze focused upon. My own Congressman, Joe Moakley, in whose office Larry had worked, introduced H.R. 370 which will provide equal protection to handicapped workers under the Civil Rights Act of 1964. Under existing law there is no generally applicable prohibition against employment discrimination based on a handicapping condition. This statute is sorely needed.

How many people are disabled in terms of work? I take my figures from "Work Disability in the United States: A Chartbook" (U.S. Department of Health and Human Services, Social Security Administration, 1980). It is based on their 1978 survey of 12,000 people from the civilian noninstitutionalized population of ages 18 to 64. In this survey "disability" was defined as "any self-reported limitation in the kind or amount of work (or housework) resulting from a chronic health condition or impairment lasting 3 or more months."

Using that survey, out of the work force of 127 million persons, there are 21 million people with some type of disability. Of the disabled persons, 8% or 10 million are severely disabled, 4% or 5 million are occupationally disabled, and 5% or 6 million have a secondary work limitation. These figures add up to 17%. Of the work force as traditionally defined, 17% are disabled persons. Combining the occupationally disabled and those with secondary work limitations into a group called partially disabled gives the following figures:

[In percent]

	Full time	Part time	Not working [1]	Total
Severely	6	6	88	100
Partially	56	16	28	100
Not disabled	68	11	21	100

[1] Includes those persons no longer looking for work.

These figures indicate several things. They indicate that many disabled persons are underemployed as well as unemployed. While there is debate over how to measure unemployment of disabled persons because so many give up job search, the lowest figures are 40% unemployed and another 40% underemployed. Other persons put the unemployment figure for disabled persons at 80%. In any event, unemployment and underemployment are serious problems for disabled people. This fact is especially true when you look at the 88% not working figure for severely disabled persons.

What is the reason for this high amount of unemployment? It is due to plain prejudice on the part of some employers. In a survey of 347 New York City firms done by the U.S. Department of Labor in the late 1960's, 68% of them said that as a matter of policy they would not hire someone with a vision impairment and 50% said that as a matter of policy they would not hire someone with CP. In a nation wide survey by the U.S. Department of Labor of 1221 firms, 70% said that as a

matter of policy they would not hire someone with epilepsy and 48% said that as a matter of policy they would not hire someone with an orthopedic handicap.

And there is ample evidence that such discrimination exists today. In Massachusetts testimony was given to a legislative committee considering similar legislation. Let me share some of this testimony with you. In each of these three cases the disabled person, although qualified for the position, was either not hired or was fired.

(1) A hearing impaired nurse was fired from her position in a hospital. Her disability prevents her from using the phone unless it is adapted with an amplifying device. Otherwise she had no other difficulty communicating with patients and staff. She told her employer about her disability during the job interview. After two weeks on the job, she was informed that her disability was "worse than thought" and was fired. She was told that she would have difficulty in general and would not be able to carry out her job because of her problem with the phone. The hospital refused to discuss any possible accommodations. She now works for a temporary employment agency and regularly performs nursing assignments with no problems. She continued to apply for full time nursing positions, but she has not yet been successful.

(2) A technician worked in a laboratory for two years carrying out his job duties. When he had a seizure on the job his employer fired him citing safety concerns. Although he had never had seizures before and there are simple safety procedures which could be followed, the employer refused to consider any other options.

(3) A person with diabetes was promised a sales job during an interview. The next day he completed the paperwork related to a medical examination. The questionnaire contained a statement that the sales persons must be able to lift seventy pounds and stand for long time periods. It also stated that any person with diabetes receiving insulin would be restricted in activity and could not be hired for a sales position. Even though the man had experience in sales, was physically fit, and could meet the stated physical requirements, he was refused employment.

Although we were successful in Massachusetts in obtaining passage of out law prohibiting discrimination in employment, there is still need for a federal statute. Let me give you one more example of such discrimination. David Moran of Everett, Massachusetts, is an advocate for disability rights and the producer of the radio show on disability issues called "Temporarily Labelled." It is on WMBR, the MIT community radio station in Cambridge. He was disabled at birth with spina bifida. He was the first handicapped student in the Everett schools and the first to graduate from high school in Everett without being forced to have home tutoring or being sent to a private school. After graduation he went to broadcasting school and worked at stations in Maine and in Massachusetts. There was a change in management where he worked. The new manager continually stressed that he was an ex-Marine and took pains to emphasize physical activity. Three persons were fired by the manager: a minority and two disabled persons.

David undertook a job search for a position in the field of broadcasting. He sent one station a tape and they wired him that they wanted to see him as soon as possible. David called them to set the time for the interview. The station manager said they would be "talking money." When he arrived there was a long flight of stairs which he climbed. When he introduced himself to the receptionist he received a funny look. The manager came out, looked at David's legs and crutches, and invited him into the office. After a ten minute interview David left with no job.

As David phrased it, he was taught that if he did not think handicap, others would not think handicap. He says that he believed it until he was 30 years old. As he said to me, he finally realized that "it was other people's attitute, not mine, that mattered." He went on to say, "I know that in any job I have to be underpaid. That is how society keeps me under their thumb."

He tried other lines of work. For a while he worked for a company which shall go nameless because it is a true scam. This company hires disabled persons to sell light bulbs over the phone. It is a scam because the product is inferior and because they rip off their employees. The employees makes calls and say, "I am a handicapped worker for . This is the only way that I can make a living." David noticed that all of the phone callers were disabled and all of the office management were not. Nevertheless, he applied for a management position. During the interview, he knew he was not being considered because they never talked about working there in the office. Instead the inverviewer told him to go to his parents (he had not lived at home for several years) and get phones installed in the basement of their house. Then he could find disabled persons to work those phones selling light bulbs. When he asked where he was going to get the capital to start up, he was told, "your parents will help you."

Being persistent he did find another job, but was laid off during a recession. He finished a bachelor's degree in psychology at Northwestern University and later received an honorary Doctor in Divinity for work done with his church. He is presently selling home and personal care products out of his home.

What these stories say is that our society is incurring great costs in terms of unemployed and underemployed handicapped workers. The cost in terms of wasted human potential is large. But the cost in terms of tax revenues is staggering. Over $40 billion will be spent this year by the federal government for income maintenance programs for disabled people and over $60 billion will be spent by state and local governments and private agencies. Not all of that $100 billion a year will be saved by enactment of H.R. 370, but a lot of it could be saved by removing barriers to the employment of handicapped workers. And there will be additional tax revenues generated by the 12 million newly employed disabled workers.

Let me conclude by saying what Larry Fraze would say if he were here today and what David Moran told me at home. I urge the Committee and the Congress to pass H.R. 370. It is a public policy which is just, which is fair, which is necessary, and which will return the tax revenues that are sorely needed today.

Mr. MARTINEZ. Thank you, Mr. Pfeiffer.

You mentioned that there are a great number of disabled individuals who are not totally disabled, and who are unemployed. If this law were passed, what would be your estimate of those who would be employed?

Mr. PFEIFFER. Well, my estimates would be approximately 12 million, at least. I am realistic about what laws do. Laws change behavior, they don't change attitudes.

It takes awhile everytime I run into an incidence in Massachusetts about employment discrimination or any discrimination, I refer it to Alex. It takes awhile, as he would tell you, to resolve the cases, to educate the employers.

For a number of employers who are quite willing and able and want to, would gladly hire disabled workers, and it is partly education, partly awareness of employers and employees. But my best estimate is at least 12 million handicapped people who are not working nationwide today would within a year or two become employed and start returning tax revenues.

I believe Congressman Moakley used a—I don't know. I don't remember exactly what figure—he used a figure earlier today about the increased tax revenues.

Mr. MARTINEZ. You just mentioned that laws don't change—they change behavior not attitudes, but don't they eventually change attitudes?

You know, the law forces a person to do something he may not normally do because he is afraid, fearful. And he thinks about that great cost that Mr. Gashel referred to. But eventually he finds out it isn't that great a cost.

And all of a sudden he finds it is not that difficult and he is forced to comply with the law. When he discovers all these other things, doesn't his attitude change?

Mr. PFEIFFER. Yes. Yes. I don't like to say I want to change attitudes. I think that that might be mind control. But changing behavior will eventually change attitudes.

I am a native southerner. I was born and grew up in Texas. And I left Texas about 1964. Went back in—went to Florida in 1978. There was a change, a definite change in the South between 1964 and 1978. And the same thing will happen here. Yes, sir, you are perfectly right. Eventually the attitudes——

Mr. MARTINEZ. Attitudes will change; enlightenment will come.

Mr. PFEIFFER. Yes.

Mr. MARTINEZ. You touched on it a little bit, Alex, when you talked about changing attitudes. And I like that statement because a lot of times attitudes are developed because of ignorance. And once people are enlightened, then they find out that it is to their benefit, really, to change their attitudes. Would you find that's true?

Mr. RODRIGUEZ. And these are so harmful, these attitudes, to the ones who bear them. And this is why I think we get the double benefit of this amendment. We are really helping people who would not consider themselves affected by H.R. 307 because they say, "I am not part of the physically challenged or mentally challenged population. Why am I interested?"

You are interested because it will touch your life. It will change the way we do business. My brother sat in these hearing rooms and testified in the late sixties, early seventies, fighting for the architectural barriers law. He was head of the Paralyzed Veterans of America. There are four of us alive now. I have just lost a brother to cancer 3 months ago. I understood the testimony this morning. I knew about the discrimination he faced in his worklife and being on work and not being at work, chemo therapy, et cetera.

I have two other brothers who are in wheelchairs both because they served this country in time of war; one in the second world war and one in Korea. That second one in Korea was the head of the Paralyzed Veterans of America, and he fought for that architectural barriers law. And Richard Nixon handed him that first pin, and I was not proud of who handed him the pin, but I was proud of the pin.

It was wonderful to see that they—they were going to get these curb cuts. Have you watched us use the curb cuts. Mothers with babies and tricycles and the whole society benefitting from something we, in our mental system placed as a benefit for only one part of the society. Access buildings—you know David said it very well, the radio show in Boston. Who said that we are all temporarily not handicapped. We all will be. It is also what fascinates me about the FAA regulations on airlines.

And I was saying to young Ted Kennedy this morning that, interestingly enough, under those regulations he can't sit by the exit. And when that plane hits, it is some thought in people's mind when that plane hits the ground that we are all going to be as we were before it hit the ground. No, that is not going to be realistic. But we have these images that we just have to get rid of. This legislation is going to help those people who don't think that they have a handicapped condition, but I contend they have a mentally handicapped condition. It is a perception illness and perception problems.

When people have them we call them mental illnesses. And the perception problem will get healthier and healthier, and they will, then, assume that single burden that I want all people in this country to assume. And that is to deal with each individual as an individual, content of character, their ability to do the job and to get rid of garbage that has nothing to do with those real determinations we have to make and that we use as shortcuts to avoid the reality that we all have to eventually avoid.

We have done this in race relationships in this country so very well. And we are doing it better every day. We have done this in relationships between gender, and we are getting better at that. We have done it realizing that the aging process is something that we have to accommodate to and we have laws there. Dealing with such a viably healthy population, the disabled, the handicapped community in America—I mean viably healthy to our economy, in just way is just going to reap us not only financial benefits, but good mental health benefits.

Mr. MARTINEZ. I agree. You know, it is interesting that you mentioned the architectural barriers. I can remember when we initiated them in our city, the number of people who were offended by it—but it is funny to see those same people who were objecting to it, using it in the way you described. Even closer to here, if you will go down on the first floor of the Capitol building on the House side, and walk toward the Rotunda, in that one hallway where there is a long ramp, you will see people using it, not in wheelchairs, but walking.

But all these people are enjoying it so much more than walking down the stairs.

I would like to ask all three of you to respond to this. Has the Rehabilitation Act of 1973 been successful in protecting the handicap? Each one of you can respond. Mr. Gashel, will you start?

Mr. GASHEL. My answer is, no. Not that it hasn't had some beneficial impact. I think any time our country speaks on an issue like this and intends to open up doors that were formerly closed, that is going to be helpful. But when we get to whether the procedural safeguards mean anything, that is when we get into a problem.

Now, some of that is the style and preferences of the present administration. Some of it isn't. Some of it is just that we are bogged down with a very cumbersome administrative process, and courts that have held that there is no private right of action or that you have to exhaust all of the administrative remedies first or something else. And so when it comes to the point of having to file a complaint or going to court about it. You can figure that it is going to be virtually a lead pipe cinch; that the result will not favor the complainant.

I think that the laws have been beneficial to this extent: they have started people thinking about their attitudes. That has been helpful. And so, you know, was it a good thing to do? Sure. But this is the next logical step, the enactment of a broad nondiscrimination law. And I think it has got to part of the regular civil rights statutes in this country. That is the significant thing here about what has been done in the States and about Mr. Moakley's bill here, is that it attaches to our constellation of laws, which deal with civil rights.

I think part of the problem with the rehabilitation law is that it is separate. And it is viewed separately. And separate isn't equal in the schools or in the law books either. And I think that is our big problem.

Mr. MARTINEZ. Mr. Pfeiffer?

Mr. PFEIFFER. Yes; I would say yes and no. There are things that have occurred because of it, which would not have occurred. But as Jim said, the important thing is we are talking about a civil right,

and it should be with the whole body of civil rights law. And there are problems with the Rehab Act of 1983. Section 503 that has to do with the contracts over a certain amount, it is handled by the Department of Labor. And once your complaint is accepted, you are not a party to the case.

If the hearing officer wants to let you know what is going on, if the hearing officer wants to share with you the information turned up, they will. But you have no guaranteed right that you are ever going to know what happened to your complaint, and they wait and look for a pattern of discrimination in an industry before they take any action. And the action, first, is simply talking to the employer.

We can't judge because we don't what has happened in a lot of those complaints. Section 504 has done some good, but just as it was beginning, sort of, to get underway, we had an administration elected which said in effect, "Forget it," and they tried to gut the regulations on 504. And the story is not necessarily germane to here. But still, as Jim said, it is the Administrator problems to get your case somewhere where it will be resolved justly, which is hampering 504. And this is an excellent idea to put it in title VII.

Mr. RODRIGUEZ. I would agree with what has been said. I mean the concept of saying that only one segment of the society, the public segment or those recipients of those funds are subjected to a particular behavior, I think, is a bad policy. I think if this going to policy of our Nation, it is policy of our Nation wherever you walk, wherever you move, wherever you go. And it becomes this consistency in a highly mobile society is an important thing, I think.

But having seen the frustration that those people who have to enforce through that act, 503 and 504, and looking at the enormous amount of paperwork as compared to the simplicity of the 90- to 100- and 80-day effort that goes into our handicapped legislation now, and we have had 120 cases in 1 year so we have had some experience to look at them. A, you have diminished the amount of work a hundredfold, and you still get to a solution. But this one is an individualized solution. It is this individual asking that his or her individual rights be protected, coming to an agency, the Federal counterpart EEOC—it is quite competent in doing what it does.

The State agencies, my brothers and sisters throughout the United States that carry out this work know what they are doing. It calls for a different type of mindset to handle this type of legislation and we are training our staff to get that mindset. But it has been amazing to me, and I can show you the figures, we have had such an increase settlement rates in this area as compared to other discrimination classes that we protect in Massachusetts.

We have got close to 30 percent of the cases immediately settled, because you are simply talking to people about common sense. You know this is common sense, and most of the employees will back off and say, "You are right. I just didn't think about it. I didn't think it would be that easy." And not to allow or to depend on something that only affects part of our society when we are asking or we are attempting to integrate people into a work force that we constantly say ought to be a majority private enterprize work force, I think, is not the way to go.

You want private enterprize, not only government recipients of fund, but all private enterprize to treat people fairly. And we are talking about fairplay here and sensibility, common sense. And as I said, it is relatively refreshing to deal on both sides with populations—the handicapped community and employers confronted with the discrimination charge—that come at a solution in a much more pleasant fashion than they do with the other protected classes.

Mr. MARTINEZ. Very good. Thank you, Alex, and I certainly agree with you.

Thank you very much, the three of you, for joining us today at our hearing and providing this valuable testimony. And with that we are adjourned.

[Whereupon, at 1 p.m., the committee was adjourned, subject to the call of the chair.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF THE AMERICAN COALITION OF CITIZENS WITH DISABILITIES
BY SUSAN PERLIK, EXECUTIVE DIRECTOR

As a Coalition of over 200 national, state, and community organizations which advocate for the civil rights of citizens with disabilities, the American Coalition of Citizens with Disabilities (ACCD) is pleased for this opportunity to present our views concerning the need to expand federal protections against employment discrimination on the basis of handicap. The five million Americans with disabilities represented by ACCD's member organizations believe that the existing federal handicap employment discrimination law, Title V of the Rehabilitation Act of 1973 as amended, is inadequate to protect handicapped individuals with disabilities (including individuals having a history of cancer) from employment discrimination.

We also believe that the existing standards of nondiscrimination under Title VII of the Civil Rights Act of 1964 as applied to race, sex, religion and national origin are either inadequate or inappropriate to address discrimination on the basis of handicap because of the variety and severity of handicapping conditions as they relate to an individual's ability to perform a job.

We therefore recommend that Congress explore legislative alternatives to current law to expand the breadth of handicap discrimination laws to ensure that employment discrimination on the basis of handicap will be remedied in the most effective manner possible. Federal protection against employment discrimination on the basis of handicapping conditions is a critical component to the extension of coverage to all employers who engage in interstate commerce and to assure uniform administration of such protection from state to state.

Today more and more individuals with disabilities are better equipped, at least from an educational standpoint, to take their rightful place in the workforce. Increasing numbers of children are receiving special education services at an early age thanks in large part to enactment of the Education for All Handicapped Children Act in 1975. Thus, many youngsters with severe disabilities are now able to work and to live independently which was not possible only a few year ago. In addition, more and more colleges, vocational and other training programs are open to people with disabilities resulting from the nondiscrimination protection afforded by Section 504 of the Rehabilitation Act as it relates to "programs or activities" which receive Federal financial assistance.

Despite this progress, individuals with disabilities remain chronically unemployed or underemployed. Many employers are reluctant to hire people with disabilities because of misconceptions concerning the abilities of workers with disabilities or the fear that hiring a person with a disability may result in undue financial burden because of the cost of providing assistance (known as an "accommodation") to the employee. Other employers may simply over react to the irrational fear of "what will my clients and customers think?": an attitude not unlike that faced by other minority groups twenty years ago.

The President's Committee on Employment of the Handicapped estimates that unemployment among Americans with disabilities ranges from 50 to 75 percent. This rate is up from a previous estimate of 45 percent.[1] Studies also indicate that

[1] President's Committee on Employment of the Handicapped quoted in "Handicapped Rights and Regulations," vol. 4, No. 7, April 5, 1983, pp. 49.

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only in a few cases is unemployment due to the inability of the individual to perform a full time job.[2] Similarly the U.S. Census Bureau reports that 60 percent of Americans with disabilities are either unemployed or underemployed.[3] Unemployment statistics do not include those persons who have given up looking for work, i.e., the so-called "discouraged" worker. Although there are no precise figures for the number of "discouraged" workers, the Bureau of Labor Statistics estimated that in July 1982 there were approximately 1,497,000 individuals in this group.[4] It can fairly be assumed that a large number of Americans with disabilities would fall into the "discouraged" worker category.

Despite these staggering unemployment statistics, studies show that workers with disabilities when assigned an appropriate position perform as well or better than their non-handicapped fellow workers.[5] Some large corporations have an exemplary record relative to employment of individuals with disabilities.[6] The E.I. du Pont de Nemours & Co. Inc. is a private employer which has made a point of hiring workers with disabilities and has monitored their progress in the company. Du Pont has achieved a reputation as an exemplary employer of people with disabilities. The company's reports are replete with examples of successful case stories: a man whose leg was amputated as a result of a military injury who serves as a maintenance mechanic; messengers with mental retardation who have years of perfect attendance, excellent performance records, and who help to train new mesengers; the blind computer programmer whose clear and orderly programs have earned him a recent promotion; a woman with multiple birth defects and an artificial leg who is an excellent stenographer; a deaf and speechless man who operates and trains others to use du Pont's computer-assisted maching center; the worker who walks with a leg brace who serves as a computer office assistant; a blind man who is a highly skilled pump mechanic. The company has also documented the accommodations it has made to allow its employees with disabilities to perform successfully and has concluded, "The cost of most accommodations is nominal."[7] Unfortunately in spite of these positive initiatives, there is a long way to go. Du Pont reports that in 1981 2.4 percent of its employees were disabled: an 89 percent increase since 1973.[8] Thus, even in this highly regarded program, workers with disabilities are represented in much smaller proportions than their estimated 9 to 13 percent share of the population as a whole.

To address problems of employment discrimination against people with disabilities, there is a clear need for comprehensive and effective laws prohibiting discrimination on the basis of handicap. Congress has enacted several laws that address portions of this need. Section 504 of the Rehabilitation Act of 1973 has been interpreted by the United States Supreme Court as outlawing employment discrimination against people with disabilities in "programs or activities" that receive Federal financial assistance. Section 504 also prohibits discrimination in employment by Federal agencies. Section 503 of the Rehabilitation Act requires Federal contractors to take "affirmative action" to employ and edvance workers with disabilities. Several other Federal laws, prohibit discrimination on the basis of handicap in various contexts. None of these laws, however, covers employment discrimination in a scope analogous to the Civil Rights Act of 1964—Which applies to all employers engaged in an industry affecting commerce that have fifteen or more employees, to employment agencies, and to labor organizations.

The desirability of prohibiting discrimination against persons with disabilities by the full range of employers for whom discrimination on the basis of race, color, religion, sex, or national origin is condemned is clear and compelling. Justice and equity demand such equal protection against discrimination. But the need for an equal scope of coverage as that provided under Title VII should not obscure the fact that standards developed to combat other types of discrimination under Title VII may not be adequate to analyze and remedy discrimination on the basis of handi-

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[2] Berkeley Planning Associates, An Analysis of Policies of Private Employers Toward the Disabled, Department of Health, Education and Welfare Contract Report, November 1981 at page 413.

[3] Los Angeles Times, October 10, 1982, part V at page 1.

[4] Monthly Labor Review, Bureau of Labor Statistics, September 1982.

[5] U.S. Department of Labor, Bureau of Labor Standards, Workmen's Compensation and Physically Handicapped Workers, Bulletin No. 234, 1961, appendix 520.

[6] Bob Gatty, "Business Finds Profit in Hiring Disabled," Nation's Business, Washington, DC, Chamber of Commerce of the United States, 1981, pp. 30–35.

[7] E.I. du Pont de Nemours & Co. Inc., "Equal to the Task; 1981 du Pont Survey of Employment of the Handicapped," pp. 17–18.

[8] E.I. du Pont de Nemours & Co. Inc., "Equal to the Task," pp.5.

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cap. Certain unique aspects of handicap discrimination call for carefully tailored remedies.

A starting point in addressing the problem of handicap discrimination is to acknowledge the complex spectrum of human abilities and disabilities. Humanity is not really broken into two distinct group—handicapped persons and non-handicapped persons, or hearing people and deaf people or wheelchair users and walking people. The reality is that for every human ability of function, there is a possible range of performance from excellent to nonexistent. This principle holds true for seeing, thinking, hearing, moving limbs, and other functions. Clusters of various abilities may make up different functions.

Everyone has unique physical and mental abilities. Wide variations occur in the applicability of techniques and devices to cope with various functional limitations. Eyeglasses, hearing aids, crutches, canes, braces, and many other such devices affect functional ability. Personal motivations, experience, education and many other factors also play an important role in dealing with handicaps.

Concepts of disability or ability and handicapped or normal have little utility in the absence of a concrete situation to which they might apply.

Society has a great deal more flexibility in the way tasks and activities are organized than is commonly appreciated. Consequently, the key to elimination of discrimination on the basis of handicap is to match the particular abilities and limitations of each individual with a disability with the essential requirements of a particular activity and to try to modify the activity as necessary to permit the individual with the disability to participate. As is often the case alteration in the way tasks are "normally" performed are frequently difficult to make because "things have always been done the other way."

Legally, this matching and modification process has been imposed as the concept of reasonable accommodation. Reasonable accommodation occurs whenever an employer provides or modifies devices, services, or facilities, or changes practices or procedures in order to match a particular person with a particular program or activity. Thus to the extent of the appropriateness of the employee's disability, meaningful standards of reasonable accommodation must be developed.

This reasonable accommodation concept has no real analog in traditional Title VII law. The term "reasonable accommodation" has been used in connection with religious discrimination, but this concept has been interpreted to impose only a de minimis requirement, not like the matching and modification process needed to deal with handicap discrimination.

Likewise, traditional Title VII law contains no direct counterpart to the requirement of architectural, transportation, and communication barrier removal that is integral to elimination of discrimination on the basis of handicap. Without the removal of such barriers, participation by people with disabilities is impossible and their exclusion assured.

Moreover, existing Title VII standards regarding the necessity of proving intent to discriminate and the analysis of selection criteria and eligibility requirements are not fully applicable to handicap discrimination.

For all of these reasons, it is our conclusion that current Title VII standards are not adequate to effectively address and remedy discrimination on the basis of handicap. The necessity for expanding the scope of coverage of handicap discrimination laws to make them coextensive with the coverage of other civil rights laws should be pursued in a manner which guarantees that the legal standards to be applied will be tailored to provide clear and effective remedies to the types of discrimination faced by Americans with disabilities.

This specific testimony has been reviewed, edited and is fully endorsed by the following organizational members of the American Coalition of Citizens with Disabilities: American Council of the Blind, Association for Retarded Citizens, Association of Children with Learning Disabilities, Disability Rights Center, National Easter Seal Society, Paralyzed Veterans of America, National Network of Learning Disabled Adults, and National Association of Private Residential Facilities for the Mentally Retarded.

TESTIMONY OF THE LEGAL AID SOCIETY OF SAN FRANCISCO

The Employment Law Center of the Legal Aid Society of San Francisco is one of the very few organizations in the nation that specialize in legal issues of employment, including, in particular, the problems faced by disabled persons in the workplace. The Society was founded more than seventy years ago to provide free legal assistance to those in the community unable to afford it. In 1972, in response to a

significant unmet need, the Society decided to direct resources primarily to the area of employment law. Since that time, we have gained national recognition as experts in that field.

Discrimination in the workplace against persons who have or have had cancer has emerged as a major issue. The Society has been responding to a growing number of inquiries from persons with a history of cancer who have suffered from unlawful actions on the job. Studies bear out that the problem is widespread. There are more than one million cancer survivors currently in the labor force, and this number is increasing constantly as medical diagnosis and treatment improves. Between 25 and 45 percent of those who return to work experience some form of adverse employment action because of their medical condition. These actions occur with regard to hiring, promotion, termination, and other terms and conditions of employment. The scope and gravity of this problem demand more than a piecemeal approach. A federal policy is required, as set forth in the proposed legislation, that ensures equality of opportunity in the workplace for those with a history of cancer.

The Society is particularly well qualified to speak to the necessity of enacting H.R. 1294 because we have been closely involved with the implementation and enforcement of a similar provision of California's Fair Employment and Housing Act. California is one of only two states, the other being Vermont, that provides specific statutory protection against employment discrimination for cancer survivors. The consequences of California's legislation, enacted in 1972, have been dramatic. As the awareness of the protections of the Act have grown, persons with cancer histories have begun to assert their rights and confront the stereotypes and misinformation underlying negative employment decisions. As employers have become better informed, many have abandoned personnel policies that keep cancer survivors from being gainfully employed. Employees, as well, have become more knowledgeable about cancer, realizing that in most instances it does not impair the ability to work. The legislation gives to cancer survivors in California a basis for asserting their work-ableness and for demanding fair and equal treatment. It also provides them with the weapon of litigation to press those rights if persuasion and education fail. Lastly, the California law offers cancer survivors a statement reaffirming their importance and value to the economy of the state.

Over the past four years the Society has seen a substantial leap in the number of cases brought by cancer survivors. Our own docket reflects an increase in the proportion of cancer patients from five to fifteen percent of all disability intakes. Although the existence of the law has undoubtedly caused many employers to change their views, it has also empowered cancer survivors to challenge unlawful practices. With the weight of the law behind us, the Society has been able to effectuate meaningful remedies for those who have suffered discrimination.

Two cases among the many that the Society has handled illustrate this directly. An engineer with a history of cancer applied for a position with a major electronics firm. He was given a conditional offer of employment subject to passing a medical examination. When the examining physician learned of the candidate's medical history, the job offer was revoked. After discussions with the personnel office of that company about the requirements of the law, the decision was vacated and the person was hired.

In another case, a gardener with a history of ocular cancer was terminated after one year's employment with a local government when the employer learned about his medical history. After pursuing administrative remedies under the state law, he was successful in achieving reinstatement.

H.R. 1294 can achieve on a national level what the state law has accomplished in California. Unless the bill is enacted, countless numbers of productive and qualified cancer survivors will continue to be denied employment. They will lose the dignity and sense of self-worth and well-being that a job provides; the nation will suffer the immeasurable loss of the creativity and vitality that the growing community of cancer survivors gives to our country.

We urge the rapid adoption of this bill, and we thank the members of this committee for allowing us the opportunity to present our views.

"Until the cure, we offer the care."

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Cancer Care, Inc.
The National Cancer Foundation, Inc.
1982-1983 Annual Report

"We try to help people live with whatever they have, and to live with it the best way they possibly can."

Cancer Care, Inc. and The National Cancer Foundation, Inc. offers professional social work counseling and guidance to help patients and families cope with the emotional and psychological consequences of cancer. The agency responds to requests for assistance from wherever they may originate. Supplementary financial assistance is available to eligible families to help with certain care-at-home costs.

Programs of professional consultation and education, social research, public affairs and advocacy are conducted on a national and worldwide basis.

Cancer Care, Inc. and The National Cancer Foundation, Inc. is a voluntary, independent, non-sectarian, nonprofit agency, separate and apart from any other cancer society. It is entirely supported by gifts, grants and contributions from the public.

For information about Cancer Care services call:

MAIN OFFICE:
One Park Avenue
New York, NY 10016
(212) 679-5700

LONG ISLAND:
Suite 504
20 Crossways Park North
Woodbury, NY 11797
(516) 364-8150

NEW JERSEY:
Suite 18
466 Old Hook Road
Emerson, New Jersey 07630
(201) 261-2003

PRESIDENT'S MESSAGE

"What we attempt to do is help a family keep its life together."

Paul H. Briger
President

Cancer Care was founded in 1944 by a small group of people who recognized that the disease could ravage a family's life as much as a patient's health. Since that time Cancer Care has provided personalized professional counseling and guidance to cancer patients and their families for as long as help is needed and at no cost to those served. In addition, Cancer Care disburses supplementary financial assistance to families requiring at-home care. Our annual budget exceeds $5 million, and I am pleased to say the agency does not receive any federal or state support.

Up to this year, Cancer Care has worked only with advanced cancer patients and their families out of offices in Manhattan, Long Island, and New Jersey. However, at this juncture, Cancer Care is embarking on an expansion in three separate spheres. First, because the diagnosis of cancer at any time is traumatic and disruptive, our Board of Trustees has approved the amendment of Cancer Care's charter to permit expansion of services to those who are newly diagnosed or have non-advanced cancer. Our staff is actively developing a model program for performing these services and, it is anticipated, such services will be available in 1984.

Our second major expansion is to extend our program to business corporations and other organizations. Cancer can change a person's perspective. Employees may be afraid to express anxiety and expose themselves as vulnerable; offers of assistance may be met with resentment and hostility. Co-workers, faced with their own fears, may be unsure of how to respond, how much to ask, how much to ignore. Cancer Care can help companies and employees confront the complications of illness and recovery by providing consultation and direct services on a regular or periodic basis at either agency offices or employer locations.

In our third new sphere of activity, Cancer Care is expanding services beyond our present tri-state focus to other communities across the country. Trustees are studying organizational models to develop nationally. In addition, steps are underway to establish an office in southeastern Florida sometime in 1985.

All of us at Cancer Care are committed to these challenging new directions; our promise is that in carrying them out we will continue to keep our high standards of professionalism and quality.

Paul H. Briger

A REPORT FROM THE EXECUTIVE DIRECTOR

"Cancer Care is committed to making our services more accessible."

Donald F. Carrine
Executive Director

We are pleased to announce that fiscal year 1982–83 was one of expansion in three important directions. This year the Board of Trustees and its Long Range Planning Committee proposed, formulated and incorporated extensions of Cancer Care services.

Looking ahead, we will develop, evaluate and refine a model program for service to New York City's population of newly diagnosed cancer patients.

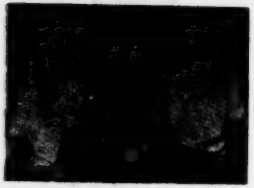
Sessions will be held in five communities, one in every New York City borough, each led by experienced social work professionals. Family members will be encouraged to participate. It is hoped the initial sessions will identify the many complex feelings, issues and decisions patients are experiencing. Subsequent meetings will provide strategies to deal with practical problems: costs of illness, transportation, and rearrangement of work and family roles; introduce behavioral techniques to manage anxiety and focus energy; explore beliefs, attitudes and fears about disease and death; and formulate goals.

From these discussions, a final plan for serving newly-diagnosed cancer patients in the most cost-efficient, beneficial manner possible will develop.

Cancer Care is committed to making our services more accessible. In addition to our Manhattan and Woodbury, L.I. offices, we opened a full-time community based service office in Emerson, New Jersey, as well as a part-time office in New Brunswick.

As part of our national expansion plans, a needs assessment is being conducted by an independent non-profit, social work research organization to evaluate the needs for a Cancer Care office in southeastern Florida. The outcome of this study will determine whether Cancer Care's specialized services would benefit this area. It will also serve as a guide to future national development.

Thus, with a model program being developed for newly diagnosed cancer patients, our services increasingly offered to people in their local community, and our eyes on a future horizon of national growth, we anticipate another year of growth and achievement.



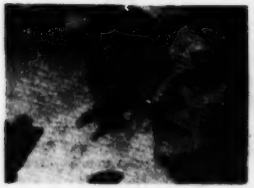
"It's clear that the disease can devastate a family's life as much as it can a patient's health."

A Unique Community Resource

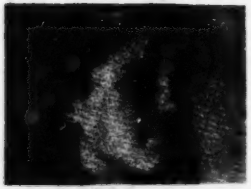
For almost 40 years Cancer Care, Inc. has provided professional counseling, information and referral services and financial assistance primarily for home health care, to cancer patients and their families throughout the tri-state area (the five boroughs of New York, Long Island, upstate New York, New Jersey and Connecticut). In addition, we respond to thousands of calls and letters from around the world requesting information on various aspects of cancer. Support for these services comes solely from private gifts, contributions and grants. No federal, state or city funds or fees for service are sought or received. Last year Cancer Care's services assisted over 25,000 people of whom 7,867 were cancer patients, and disbursed $686,977 in financial assistance to over 900 families.

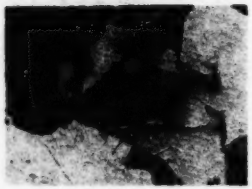
Cancer Care and the Hospice Movement

The steady advance of the hospice movement in this country has given rise to questions about whether Cancer Care is a hospice service. Since the agency has served advanced cancer patients for almost 40 years, it is in many ways similar to hospice which cares for the terminally ill. While Cancer Care supports the hospice concept and works closely with local and national hospice organizations, there are distinct differences between this agency and hospice agencies. Unlike hospice, Cancer Care does not attempt to deal with the medical aspects of a patient's care, but rather assists patients and families to deal with the multiplicity of psychosocial concerns with which they are confronted. Our patients include newly diagnosed cancer patients,



"I needed an outlet for all my fears and anxieties... I couldn't go through this alone."





as well as those in more advanced or terminal stages, many of whom have chosen to continue with active therapy for their disease. Hospice services are of specified duration, while Cancer Care's services are available for as long as they are needed. Hospice and Cancer Care will continue to work together, referring patients and families to each other in accordance with the needs and wishes of cancer patients and their families.

Until the Cure, We Offer the Care

Though medical research has made recent and impressive progress in identifying potential causes and treatments of cancer, it can still be a fiercely devastating disease. 850,000 new cases were reported nationwide in 1982, affecting two out of every three families. The psychological and economic impact of the disease are a reality every concerned man and woman must face until the cure or cures are found.

The diagnosis of cancer at any time is a traumatic experience. It touches all aspects of an individual's life: body image and the effects of disease and treatment; economic security and independence; plans for work and achievement; relationships with family, friends and co-workers.

Patients and families may feel overwhelmed by the crisis of their diagnosis and unable to communicate their fears, anger and concern. They may also be unaware of options open to them.

Fortunately, recent advances in early diagnosis and medical treatment technologies may enable cancer patients to live longer, more productive lives, but the need for counseling to help with the stresses of cancer is not diminished.

As a result, this year, Cancer Care's Board of Trustees, recognizing the urgent need of support for this growing population of *newly* diagnosed, non-advanced cancer patients, took the first steps to initiate an innovative program that will reach out to these patients and serve them. Cancer Care is the only large agency professionally staffed to offer psychosocial counseling to *all* cancer patients and their families.

Sharing Often Brings Solutions

Staffed by professional social workers (MSWs), the agency adapts its services to the needs of each patient and family.

Individual counseling allows the social worker to determine the specific needs of the patient, to elicit concerns and fears.

Group sessions for cancer patients encourage patients to talk about what

is happening to their bodies, minds and spirits, and thus draw strength from one another. Counseling for family members helps spouses, children, brothers, sisters and other relatives and close friends to express their feelings during the course of an illness. Because sharing often brings solutions, the family is helped to function positively.

Spouses and family bereavement groups enable widows, widowers and other family members to talk about their loss, and take up their lives again.

This year Cancer Care held 276 group sessions attended by 1,949 people. While most were held in the main office, an increasing number of such sessions took place in the community at our Woodbury, Long Island office and in Plainview, New York.

Programs for Professionals

The agency social service staff involved itself more extensively this year in sponsoring workshops and meetings where special approaches and field-tested methods were explored with other professionals. During the year, Cancer Care social workers participated in 34 professional conferences. Among the subjects covered were grief, aging, mental illness, treatment techniques, and social work student training.

On October 20, 1982, our second annual professional conference took place, entitled "The Crisis of the Cancer Experience: Danger and Opportunity." The 300 in attendance were addressed by Cancer Care's professional social workers who presented a videotape and discussion of a patient counseling group, a dramatization of an interview, a paper on attitudes toward cancer and small group workshops.

As part of the agency's program of continuing professional education, formal presentations were made at hospitals, universities, schools of social work, and nursing homes. The LEAPS (Learning Exchange and Peer Support) program, now in its second year, enabled the staff to share Cancer Care's expertise with other social work, psychology and health professionals.

Again this year, Cancer Care proceeded with its program of supervised clinical field-work training for graduate students from accredited schools of social work—a practice begun 14 years ago.

Educational papers, audio-visual materials, reports and research papers are always supplied on request, nationally and around the world.

For left and center: Workshops and programs are a part of Cancer Care's professional outreach program.

Above right: Social work and mental health professionals are quite attentive at an agency conference presentation.

bers are vital. They're
y day, talking about
nd raising funds."

"We had to go seeking and we found that Cancer Care responded in a positive, simple, and very real way."

PUBLIC INFORMATION AND EDUCATION

Through many forms of communication, Cancer Care helps the general public understand the needs of cancer patients and their families and how agency services work to meet those needs.

Our message: counseling by professional social workers can help to alleviate the impact of this catastrophic illness on the patient, and find means to keep the patient's family intact and functioning.

This message is conveyed through institutional advertising in print, on radio and television, at conferences, seminars and special events, and by broad distribution of speeches, reports and brochures, as well as through videotapes of patients and their families, created to give viewers a deeper understanding of cancer and its related problems.

Specifically, the agency public information and education budget includes the production and printing costs of surface transportation advertising, bulletins, news releases, brochures, annual reports, and radio and videotapes for public service announcements.

PUBLIC AFFAIRS: Activities in the Public Interest

As part of its commitment to its clients, Cancer Care maintains an active Public Affairs program which supplies information to legislators and policy makers in the health care field to enable them to make informed decisions regarding catastrophic illness.

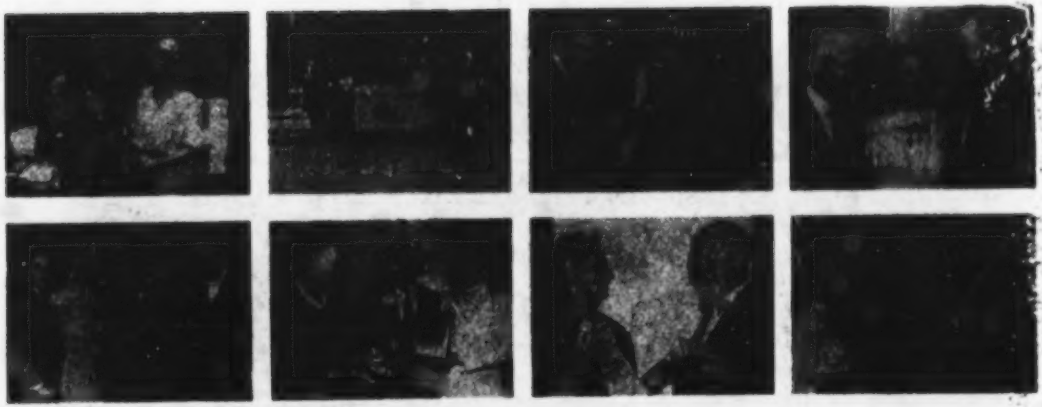
Another major effort of the Public Affairs Division has been preparation for a research study on the costs and consequences of cancer, including what we expect will be a vigorous inquiry into patterns of referrals to the Social Service Division and comprehensive information about cancer patients and their overall needs.

Cancer Care has been assisted in this endeavor by a very prestigious Advisory Committee composed of persons from the National Cancer Institute, the National Centers for Health Statistics and Health Services Research, Blue Cross-Blue Shield of Greater New York, Memorial Sloan-Kettering Hospital, and the National Hospice Study.

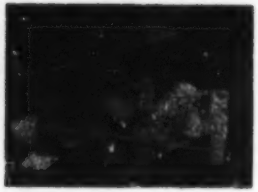
In addition, the Public Affairs Committee continues to monitor developments in hospice, particularly the new Medicare coverage for hospice care and home health issues. A total of 59 Legislative Memoranda were sent on federal issues, and 51 on New York State legislative proposals.

We look forward in the next fiscal year to increased legislative involvement in New Jersey as Cancer Care becomes more visible in that state as the result of our new offices there.

Above: Jerry Stiller and Anne Meara are long-time media spokespersons for the agency.



FINANCIAL DEVELOPMENT AND CAMPAIGNS



Cancer Care is supported entirely by private giving with neither fees for service nor government assistance sought or received. Our programs continue to encourage the generosity of old friends as well as to inspire new donors and volunteers. We recognize, with pride and sincere appreciation, this steadfast support and concern.

Above left: Trustee Mrs. David M. Rauch and Cancer Care President, Paul H. Briger, are pleased with the contribution from the Manhattan Chapter of Eastern Airlines' "Silverliners," presented by Mrs. Kerry Burke (right) the group's President.

Above right: Pictured at Les Boutiques de Noel's annual pre-Christmas sale is Mrs. Paul H. Briger (right) Vice President of its Board, chatting with a guest.

Opposite: Members of the Board of Trustees at their Annual Meeting at McGraw-Hill on June 8.

AFFILIATE AND CONTRIBUTING GROUPS

Many private groups and civic organizations donate the proceeds of sponsored events to Cancer Care. These groups are among the many which have raised needed funds and given generously to the agency over the years.

The Minnie and Abe Bergman League of Cancer Care, Inc.

A "Glittering Gala in the Sky" was the theme of this year's benefit sponsored by the Minnie and Abe Bergman League. This dedicated affiliate group, guided by founders Rose and Jack Less, Fran and Lester Elias, and Ida and Gerald Gould, continued their tradition of thirteen years of service to Cancer Care with another glamorous party at Windows on the World in

"Cancer is a financially draining disease, even to those who consider themselves well-off."

October. The evening was highlighted by a fashion show, courtesy of Liberty of London Shops, Inc. The Bergman League works tirelessly throughout the year raising thousands of dollars for Cancer Care with a Chinese Auction, an annual luncheon and a series of theater parties.

The Eastern Airlines' Silverliners

The Manhattan Chapter of Eastern Airlines' Silverliners, who has sponsored benefits for Cancer Care since 1975, hosted "A Night in Hollywood" at Club El Morocco in April. Dressed as their favorite Hollywood stars, guests were awarded "Oscars" for their imaginative costumes. Silverliner Fran Rubin, with the assistance of Presidents DeeDee Burke and Patti Morrissey, coordinated the event which earned $7,500 for Cancer Care.

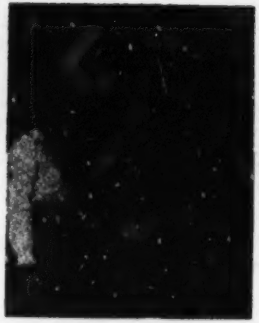
Les Boutiques de Noel

For twenty-three years, Les Boutiques de Noel has coordinated a pre-Christmas sale for the benefit of several not-for-profit organizations. Cancer Care is fortunate to have been designated a recipient of the proceeds from this popular event since its inception. Mrs. Joan H. Russell, a member of Cancer Care's Board of Trustees, is a Director, and Mrs. Paul H. Briger, whose grandmother Mrs. Pauline C. Washburn was a founder of Les Boutiques, serves as Vice President of this dedicated volunteer group.

Above: Members of the Minnie and Abe Bergman League greeting guests at their annual Windows on the World Dinner Dance.

Opposite: Cancer Care benefited from "A Night in Hollywood" at Club El Morocco sponsored by long-time supporters, the Manhattan Chapter of Eastern Airlines' "Silverliners."

Opposite below: Co-founders of the Minnie and Abe Bergman League, Rose and Jack Lee, share a joyous moment with Mr. and Mrs. Howard Parks, winners of the League's raffle trip to Hawaii.



CHAPTERS: COMMUNITY-BASED SUPPORT

To help raise the funds that provide Cancer Care's services at no cost to patients and their families, the agency turns to the volunteer members of its 53 local Chapters.

This year, through special efforts and events, Cancer Care Chapters raised $640,600, an increase of $110,600 over the previous year.

Super Carnival '83, held in June for the third year, was a most successful endeavor, amassing $20,609, an increase of $4,145 over 1982. The annual All-Chapter Raffle, with a trip to Hawaii as top prize, raised approximately $13,000.

The Chapters' annual Walk-A-Thon on October 3, 1982, held in Battery Park, Manhattan, and other locations in the Greater New York area, brought in over $40,000 in paid pledges for the thousands of miles walked.

A new Cruise-to-Nowhere proved to be an attractive incentive, netting $2,553.

The Membership Drive for all Chapters, initiated in April, 1982 continues to attract new volunteers at a steady rate.

SPECIAL EVENTS

Metropolitan Club Dinner Dance

The fourth annual Dinner Dance and Silent Auction at the Metropolitan Club raised nearly $50,000 for Cancer Care. The Benefit Committee, led by Co-Chairmen Mrs. John F. Saladino and Mrs. E.B. Wilson, obtained over 150 auction items, ranging from designer dresses to dinner at some of New York's most elegant restaurants. Over 200 guests joined the bidding, which was coordinated with the invaluable help of the Junior Committee.

Spring Benefit

The elegant premises of Stair & Co., and The Incurable Collector on Manhattan's 57th Street was the setting for Cancer Care's Spring Benefit in May. Over 100 guests sipped champagne as they viewed the fabulous collections of 17th and 18th century English furniture, paintings, and porcelains. Alastair Stair, owner and proprietor, kindly agreed to donate a percentage of the proceeds from sales made that evening to Cancer Care.

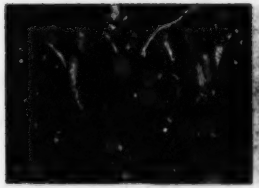
DIRECT MAIL

Response to 1982–1983 direct mail programs included gift renewals, new donors and new "In Memory" contributions which totaled 240,421 replies and resulted in $2,791,866 for the agency. The number of mailings increased 32% over the previous year, amounts went up 26%, and the average gift climbed 8.8%

In the previous year 5,028 donors gave gifts of $50 and above, totaling $447,539; in this fiscal year, 7,128 donated a total $687,000–41.8% over the previous period. As a result of this year's direct mail, new donors contributed $999,370 (an increase of 16% compared to $859,288 received the year before).

FOUNDATIONS

Cancer Care has actively sought to augment its income with increased support from the foundation community. This year we were awarded



"I saw the services they were providing for people in the community. I wanted to help."

62 grants for general support totaling $227,779. We also received special project grants from The New York Community Trust, The J.M. Foundation and the United Hospital Fund for a study on the cost and consequences of cancer.

SPECIAL FUNDS

Establishing a special fund of Cancer Care is a way of making an enduring contribution while honoring someone dear. Funds carry a name, designated by the donor, that remain at Cancer Care in perpetuity.

The Pauline C. Washburn Fund of Cancer Care

The late Mrs. Pauline C. Washburn, one of Cancer Care's most devoted volunteers, is being honored with a

Opposite page, left to right: Walk-a-thon '82 kicked off Cancer Care Week (October 3–9) throughout the Metropolitan region. These walkers took their ten-mile hike in Battery Park in Manhattan.

At Super Carnival '83 in the Co-Op City section of the Bronx, Sophie Bernstein (right) points out the merits of the ferris wheel to her co-worker, Gladys Ginsberg.

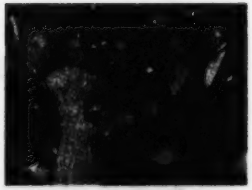
Alastair Stair, (left) owner and proprietor of Stair & Co. and the Incurable Collector exchanging views with Cancer Care Trustee Mrs. J. William Weeks and her husband at the agency's Spring benefit.

Above left: Pictured at a recent benefit are Junior Committee members (L–r.): Alison and Andrew L. Cushman, Diana and Lyman Delano, Abigail H. Ross, Jeffrey Stevenson, Susan Watchler and Greg Petrillo.

Above right: Mr. and Mrs. Paul H. Briger with Trustee Mrs. Fremont Felix (left) at the agency's Stair & Co. Spring benefit.

Opposite: Greeting the guests at the annual Metropolitan Club Dinner dance are (L–r.): Mr. and Mrs. John F. Saladino, Co-Chair, Mrs. J. William Weeks, 1981 Co-Chair, and Mr. and Mrs. E.B. Wilson, Co-Chair.

Opposite below: Enjoying themselves at the Metropolitan Club benefit are (L–r.): Trustee John W. Matthews and his wife Catherine, Treasurer Fred D. Fine and Mrs. Fine and Associate Executive Director, Susan T. Vandiver.



special fund in her name. Friends and members of her family have formed a committee to pay tribute to Mrs. Washburn, whose career with the agency included twenty years as a member of the Board and eight years as Vice President. Mrs. Washburn, who was active in the founding of the Cancer Care Thrift Shop and Les Boutiques de Noel, died on May 2, 1983. Co-Chairmen Frank A. Vanderlip, Jr. and Mrs. Lydig Hoyt, both past members of the Board, have set a goal of $250,000 for this fund. The money will be used to implement and endow services designed to meet the needs of the newly diagnosed cancer patient.

BEQUESTS

In fiscal 1982–83, bequests from patients, family members, and friends of Cancer Care, Inc. and The National Cancer Foundation totaled $875,141. We are most grateful for their contributions and will continue to encourage our friends to make provisions for the agency in their wills. These gifts can take the form of stocks and securities, real estate, works of art, trust funds, insurance policies or cash. Bequests are a thoughtful and lasting way of ensuring that Cancer Care can continue to expand its vital services to meet the needs of cancer patients and their families in the future.

ANNUAL RECEPTION

Cancer Care paid tribute to its dedicated volunteers at the third annual reception in June. Over 500 people filled the Reading Room on the 50th floor of the McGraw-Hill Building, while President Paul H. Briger presented the awards for outstanding services.

Media awards were given to WCBS-TV, WNBC-TV and WRFM Radio for their portrayal of Cancer Care's program and services in recent broadcasts. Special recognition was given to agency spokespersons Anne Meara and Jerry Stiller; Virginia Saladino and Betsy Wilson, Co-Chairmen of the 1982 Metropolitan Club Dinner Dance; the Minnie and Abe Bergman League; Robin Rees Weeks; former Board President, Kenneth J. Ludwig; the Manhattan Chapter of the Eastern Airlines' Silverliners; Les Boutiques de Noel; Medical Consultant, Dr. Carlo Grossi; *The Jersey Journal*; the Plumbing Supply Club; Winet Advertising; The Manhattan Empire Chapter of the Telephone Pioneers of America; Thrift Shop Volunteer, Claire Perlberger; Eleanor Schneider; and Neil Mitty for their efforts in support of the agency.

Above left: Cancer Care's Community Service Media Award is presented by Paul H. Briger (left) President, Board of Trustees, to Karen Copeland, Program Director and Joe Michaels, Moderator, for WNBC-TV's "Prime of Your Life."

Above right: The late Mrs. Pauline C. Washburn accepting the "1963 Volunteer of the Year" award from then President Frank A. Vanderlip, Jr.

"We help over 28,000 people a year. Providing these services takes a substantial budget."

This year the Cancer Care Thrift Shop at 1480 Third Avenue in Manhattan (between 83rd and 84th Streets) contributed income of $250,000 to the agency, an increase of 50% over last year.

The shop offers a variety of donated wares, including silver, furniture, books, clothing, and jewelry. All proceeds from the shop are directed to Cancer Care for general operating purposes. Anyone interested is invited to make donations directly to the shop, in the form of salable merchandise or contributions by check.

Opposite: A crowd waiting to enter Cancer Care's Thrift Shop at 1480 Third Avenue.

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Associated Health Foundation, Inc.
Herman Boerwald Fund of Cancer Care
Ida Bernstein Memorial League, Inc.
Boro Men's League
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The Evening Journal Association
Pauline C. Washburn Fund of Cancer Care
Wheels, M.C., Inc.
Helen Zelmon Memorial Fund

*Partial Listing

Our thanks to the following volunteers for special fund raising assistance:

Mrs. Michael Abel
Bruce Addison
Mrs. Louis Appignani
Doris & Mel Atlas
Mrs. Michael Axel
Mr. & Mrs. Harold O. Barker
Carol Bazarian
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We are deeply grateful to the following foundations for their generous gifts in fiscal 1982–83:

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CANCER CARE, INC. BEQUESTS FOR FISCAL YEAR 7/1/82–6/30/83

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Board of Trustees
Cancer Care, Inc. and The
National Cancer Foundation, Inc.
New York, N.Y.

We have examined the combined balance sheet of Cancer Care, Inc. and The National Cancer Foundation, Inc., as of June 30, 1983, and the related statements of support, revenue and expenses and changes in fund balances and of functional expenses for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We did not examine the financial statements of certain Chapters of Cancer Care, Inc., which statements reflect total assets and gross public support and revenues constituting approximately 2 percent and 17 percent, respectively, of the related combined totals. These statements were examined by other auditors whose reports thereon have been furnished to us, and our opinion expressed herein, insofar as it relates to the amounts included for these Chapters, is based solely upon the reports of other auditors.

In our opinion, based upon our examination and the reports of other auditors, the aforementioned combined financial statements present fairly the combined financial position of Cancer Care, Inc., and The National Cancer Foundation, Inc., as of June 30, 1983, and the results of their operations and changes in their fund balances for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Laventhol & Horwath

New York, N.Y.
December 9, 1983

Laventhol & Horwath
Certified Public Accountants

CANCER CARE, INC. AND THE NATIONAL CANCER FOUNDATION, INC.
COMBINED STATEMENT OF SUPPORT, REVENUE AND EXPENSES AND CHANGES IN FUND BALANCES
YEAR ENDED JUNE 30, 1985

	Current funds		Total
	Unrestricted	Restricted	all funds
Public support and revenue:			
Public support:			
Mail appeal	$2,795,108		$2,795,108
Contributions	258,479	$ 5,060	263,539
Special events (mail offer), net of $72,883 of direct costs	126,180		126,180
Special events (chapters), net of $1,014,345 of direct costs	558,664		558,664
Thrift shop, net of $91,548 of direct costs	254,348		254,348
Foundations	297,403	60,000	357,403
Unassociated contributing groups	57,580	25,000	82,580
Legacies and bequests	875,141		875,141
Greater New York Fund	422,512		422,512
Total public support	5,511,925	90,060	5,602,189
Revenue:			
Investment income	252,675		252,675
Membership dues	51,589		51,589
Bulletin advertisements	5,602		5,602
Meetings	5,073		5,073
Total revenue	313,939		313,939
Total public support and revenue	5,825,564	90,060	5,915,244
Expenses (Note 5):			
Program services:			
Social services to patients and families, including dialogue rooms, social research, professional education and training	2,163,799	20,795	2,184,594
Community service	551,160		551,160
Public education and public information	277,156	600	277,756
Public affairs	102,663		102,663
Total program services (carried forward)	2,964,798	21,395	2,986,193

	Current funds		Total
	Unrestricted	Restricted	all funds
Expenses (continued):			
Total program services (brought forward)	$2,964,798	$ 21,395	$2,986,193
Supporting services:			
Financial development and campaigns	1,302,125		1,302,125
Management and general	542,810		542,810
Total supporting services	1,844,935		1,844,935
Total expenses	4,799,701	21,395	4,731,098
Excess of public support and revenue over expenses	1,114,683	68,465	1,184,148
Fund balances, beginning	2,268,282	103,750	2,372,032
Interfund transfers	23,735	(23,735)	
Fund balances, ending	$3,606,680	$149,480	$3,556,180

See notes to financial statements

CANCER CARE, INC. AND THE NATIONAL CANCER FOUNDATION, INC.
COMBINED STATEMENT OF FUNCTIONAL EXPENSES
YEAR ENDED JUNE 30, 1985

	PROGRAM SERVICES					SUPPORTING SERVICES			
	Social services to patients and families*	Community services	Public education and public information	Public affairs	Total	Financial development and campaigns	Management and general	Total	Tot.* expenses (Note 5) 1985
Salaries	$ 976,757	$176,775	$139,041	$ 67,874	$1,349,443	$ 150,625	$214,650	$ 365,236	$1,714,7[illegible]
Employee health and retirement benefits	150,774	31,350	14,169	9,442	185,330	21,481	29,053	50,516	236,054
Payroll taxes	80,955	19,081	8,673	5,782	114,471	13,154	17,780	30,934	145,405
Total salaries and related expenses	1,188,486	227,015	150,877	85,098	1,649,454	185,261	261,445	446,706	2,096,160
Professional fees and contract service payments	19,536	2,000	9,597		31,113	243,000	112,457	355,555	386,668
Direct disbursements to patients' families for services	686,971				686,971				686,971
Printing and publications		5,555	45,554		47,409	380,785	11,251	401,096	448,505
Postage and shipping	4,781	8,964	14,797	62	28,604	357,491	13,099	370,580	399,194
Supplies	10,269	14,848	2,747	505	28,149	7,472	10,889	18,361	46,510
Telephone and telegraph	37,688	6,662	1,081	505	45,317	2,559	7,888	10,387	55,704
Occupancy	177,507	31,501	19,565	11,560	240,021	46,670	40,310	86,980	327,099
Repairs and maintenance	22,501	4,210	2,548	1,546	30,652	5,962	4,635	10,597	41,249
Affiliation dues	90	280	1,364	285	2,019	905	4,021	4,926	6,945
Magazines, books, library	1,124	27	324	1,753	3,228	2,152	1,101	3,253	6,481
Local transportation and meals	12,536	9,190	2,042	340	25,717	10,716	9,545	20,261	45,979
Radio, television and film	4,284	845	17,372		22,481	4,069	2,326	6,395	28,876
Conferences, meetings and conventions	5,479	750	679	2,320	9,227	1,455	50,970	60,608	69,632
Chapters, community-based volunteer expense									
Insurance	7,708	1,897	895	557	10,987	41,079		41,079	41,079
Volunteer expenses and recognition						1,266	1,983	3,249	14,186
Miscellaneous	69	10,212	9,040		19,321	1,154	20,471	21,625	40,946
	1,305				1,305	210	1,501	1,711	2,914
Total expenses before depreciation	2,180,064	320,206	277,134	102,550	2,879,885	1,501,294	541,847	1,843,124	4,723,007
Depreciation of furniture and equipment	4,550	592	542	324	6,278	841	970	1,811	8,089
Total expenses	$2,184,599	$320,160	$277,730	$102,865	$2,886,161	$1,502,125	$542,810	$1,844,935	$4,731,096

* Including disbursements, social research, professional education and training

See notes to financial statements

1. Summary of significant accounting policies:

Investments are stated at cost. Donated investments are reflected as contributions at their market value at date of receipt.

Donated inventory and services have not been reflected in the accompanying financial statements since no objective basis is available to measure the value of such inventory and services. Nevertheless, a substantial number of volunteers have donated significant amounts of their time in the Organization's program services and its fund-raising campaigns.

Expenses by function have been allocated among program and supporting services classifications on the basis of time records and on estimates made by the Organizations' management.

All funds over which the Board of Trustees has discretionary control have been included in the current unrestricted fund. Funds available for use but expendable only for operating purposes specified by the donor have been included in the current restricted fund.

Furniture and equipment are stated at cost. Depreciation is computed on a straight-line basis, over the estimated useful lives of the assets. A separate property fund is not presented as there are no significant assets which would be included therein and the only operating items would be depreciation.

Financial statement presentation follows the recommendations of the American Institute of Certified Public Accountants in its Industry Audit Guide, "Audits of Voluntary Health and Welfare Organizations."

2. Nature of the Organizations:

Cancer Care, Inc. and The National Cancer Foundation, Inc. are charitable organizations devoted to education, research and patient services relating to cancer patients and their families. The organizations are not-for-profit voluntary health agencies exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. They have been classified as organizations that are not private foundations under Section 509(a)(2) of the Internal Revenue Code and qualify for the 50% charitable contributions deduction for individual donors.

The Board of Trustees and management employees of the Organizations acknowledge that, to the best of their ability, all assets received have been used for the purpose for which they were contributed, or have been accumulated to allow management to conduct the operations of the Organizations as effectively and efficiently as possible.

3. Commitments:

The Organization rents space under operating leases for its headquarters, district office, and thrift shop expiring in various years through 1988. The annual minimum rental commitments as of June 30, 1983 are as follows:

	Minimum rental	Less sublease revenue	Net rental
1984	$295,573	$ 76,905	$208,768
1985	221,460	64,004	157,456
1986	15,450		15,450
1987	15,450		15,450
1988	14,160		14,160
	$562,093	$140,809	$411,284

Occupancy expense included sublease rentals of $61,457.

4. Pension plans:

The Organization has a noncontributory pension and retirement plan covering substantially all of its employees which provides for immediate vesting of eligible participants. The most recent date for which the benefit information was determined is January 1, 1983. The actuarial present value of vested accumulated plan benefits totals $736,715. The plan net assets available for benefits total $1,380,727. The assumed rate of return used in determining the actuarial present values of vested accumulated plan benefits was 7½%. Pension expense for the year was $108,234.

5. Allocation of expenses:

The organization has revised its method of allocating expenses to program service and supporting service categories in 1983.

Giving to Cancer Care, Inc. and The National Cancer Foundation

Cancer Care, Inc. and The National Cancer Foundation has, for almost four decades, provided services to help patients and their families cope with the emotional, psychological and financial consequences of cancer.

This has been made possible through the generosity of private individuals who have made gifts or have provided for us in their wills. To ensure that these vital services can be provided in the coming years, we invite you to express your continued support of our program by supplementing your annual contribution with a planned gift. This can take the form of securities, property, life insurance or trust funds in addition to cash.

The type of gift or bequest that is best suited to you and your family depends on your particular situation, needs and philanthropic wishes. Your attorney can help you plan a lasting gift that will provide tax benefits for your estate.

Cancer Care, Inc. and The National Cancer Foundation deeply appreciates the generosity of donors who have remembered our program in their wills. For those who wish to make similar provisions, we suggest that one of the following formats be used:

> I bequeath to Cancer Care, Inc. a not-for-profit corporation of the State of New York, having its principal office at One Park Avenue, New York, N.Y. 10016, the sum of $ _____ for its general corporate purposes.
>
> or
>
> I bequeath to The National Cancer Foundation, Inc. a not-for-profit corporation of the State of New York, having its principal office at One Park Avenue, New York, N.Y. 10016, the sum of $ _____ for its general corporate purposes.

To obtain more information on annual, memorial and planned gifts write or telephone Cancer Care, Inc., Office of Development, One Park Avenue, New York, New York 10016, Carol E. Cohen, Director of Development (212) 679-5700. We will be happy to answer any inquiries you or your advisors wish to make.

The names "Cancer Care," Cancer Care, Inc., The National Cancer Foundation, Inc. and the design of the lamp in the service mark are registered with the U.S. Patent Office for the exclusive use of Cancer Care, Inc. and the The National Cancer Foundation, Inc.

A copy of the last financial report filed with the Department of State may be obtained by writing to New York State, Department of State, Office of Charities Registration, Albany, N.Y. 12231 or on request from Cancer Care, Inc. and The National Cancer Foundation, Inc.

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The Cooper Union Center for Design and Typography

PREPARED STATEMENT OF GRACE POWERS MONACO, J.D., NATIONAL LIAISON CHAIRMAN, CANDLELIGHTERS (PARENTS OF CHILDREN WITH CANCER)

Mr. Chairman and Members of the Committee: My name is Grace Powers Monaco. I am National Liaison Chairman of the Metropolitan Washington Candlelighters. This association serves as the legislative arm of an international volunteer coalition of 225 groups of parents whose children have or have had cancer in 50 States, Canada and on every continent.

Children's cancer treatment successes have led the good news in cancer treatment for this decade. When my daughter was diagnosed in 1968, the possible cure rate for her cancer was less than 10%. Today the cure rate for acute lymphoblastic leukemia is 50% nationwide and 80% at centers of excellence in treating pediatric cancers.

NO CURED KIDS NEED APPLY

It is a tribute to the medical care teams treating our children that so many of our cured children aspire to medical professions. Those aspirations are not easy to attain.

For example, T.H., a cured Hodgkins patient with a residual pain problem, as a high school senior, met with state vocational rehabilitation representatives. It is her perception that this counselor tried to steer her away from a nursing career due to his misconceptions about cured cancer kids. He talked about her need to avoid infection, he cited anticipated employer resistance.

One would think that there would be no employer resistance in a hospital. After all they know the facts about the abilities of our kids and their cured status. They should take a certain pride in the advances in their medical profession that have made the cure of so many of our children possible.

Cured Candlelighter teens and young adults, male and female, have become pediatric nurses, surveyors in rehabilitation hospitals, medical social workers, recreation therapists with pediatric cancer patients, speech pathologists, etc.

However, the road to these jobs was not always easy. Some of these professionals had to prove that they had the physical stamina to make it. They had to overcome suspicion that their experience with cancer compromised or deprived them of a mental toughness to deal with children now suffering from the disease they had as a child. They made it, but the road blocks have prevented many others from making it.

K.D. had osteogenic sarcoma. His left leg was amputated and he has been off treatment for almost 7 years. He went on subsequent to treatment to be a place kicker on his high school football team. After high school he attended the Medical Careers Institute and passed the certification test in April of '84 as a cardiac technician. No nibbles. Is it his handicap, his cancer background that is keeping him unemployed—surely it isn't his training, he is fully certified.

J.O. is a brawny, scrappy 21 year old. At 15 he was diagnosed with acute lymphatic leukemia. He and his doctors considered him cured. For 4 years after high school he was turned down on all job applications. His sole job, a month long stint at a fast food restaurant. Finally, a political precinct captain pulled some strings and he is now a park district landscrapper.

G.P. was diagnosed with Stage IV A Hodgkins in early 1976 when he was 16 years old. He hasn't been on active treatment for 7 years and is considered cured. G.P. has had a dream since he was 10—to be a navy pilot. He took his written naval aviation reserve officers candidate exams and passed them and his flight physical with flying colors. During his physical the naval doctor asked what his scar was from, 30 minutes later he said because of the history of Hodgkins he could not be accepted in the program; he could not even enlist in an emergency to serve his country. They do not want him. He feels as if they consider him a used car.

D.N. was diagnosed with a malignant tumor in 1975. She has had no treatment since it was surgically excised. She is a party to a lawsuit that alleges that she was refused a police department job because she has had cancer.

Her concern is the children with cancer. What if "one of my children was diagnosed with cancer at 3? Twenty years later—could they get a job—probably not".

D.F. was diagnosed with acute lympathic leukemia in January of '78 at age 16 years 9 months, he has been off all treatment for almost 5 years. He has tried to enlist in all branches of the armed services—navy, air force, army, coast guard and marines. The marine officer who turned him down told him it was one of the hardest things he had to do since at 6'3", 190 lbs., perfect health and perfect physique he looked like a marine. He has passed all his tests and physicals; he is considered cured by his doctors.

S.R. was diagnosed with leukemia in 1971. He has been off all treatment since 1974. The basis of his disqualification for military service was given as A.R. 40-501—a history of cancer. They felt that the leukemia could reoccur (I wonder what medical texts they have in their library and the extent of their dust allergies). They will take epileptics, they will take sickle cell disease victims. Are they telling us that these conditions pose less of a risk to "the ability to complete basic training, a demanding physical schedule and keeping medical cost and loss time to a minimum." Our cured kids aren't on any medication and don't anticipate any down time except for ordinary problems like a cold or flu or bowling balls dropped on feet or sprained ankles and ligaments from too much physical exercise.

What about the road blocks being thrown up before our children who are still in treatment but have a prognosis of long term survival and possible cure? My case in point is a freshman at a southern college who is being treated for osteogenic sarcoma. Due to a family divorce and family medical bills, the mother needed and applied for assistance from the state vocational rehabilitation division. They turned her down on prosthetics and for sponsorship of college tutition and fees. Their reason: You may not live long enough to reach your vocational goal. They would help if she quit college and accepted a short training program that would immediately permit her to be employed.

What of our cured kids who have been left with minor neurological deficits. R.K. had a brain tumor. The student is pursuing a masters in social work and has finished all but one subject which is necessary before she can begin her internship. She has flunked the test twice in the law unit subset.

The reason she flunked is not because she fails to have the substantative knowledge but because of the brain tumor she cannot function at the speed necessary to take the test in the normal manner. The school offered her the opportunity to take the course again in the fall. However this would have delayed her entry into the requisite internship program which is part of the MSW degree program. The lack of an alternative testing system for her is attributed to a particular professor's attitude but that attitude has been adopted by the school of social work. It may take a lawsuit to insure that our children who have the complete understanding and complete ability to do the work but need a little more time because of the effect of their chemotherapy and radiotherapy can get what their competence deserves.

The problem is very well. It certainly is confirmed by the smattering of examples that I have given you above. It is also confirmed by a study entitled "Psychological Consequences of Childhood Cancer Survival" which was presented at the annual meeting of the Society for Epidemiologic Research in Houston, TX in June of 1984. The authors Tita, Delpo, Kaal, Meiga, Myers and Mulvihill have gotten to the heart of the problem that parents know confronts our cured children with cancer.

This group's research was conducted in response to the unique needs of the increased numbers of childhood cancer survivors, and expressed to these investigators by the leadership of Candlelighters Foundation (a support group for parents of children with cancer), who hypothised higher rates of depression, suicide, running away and denial of life and health insurance, as well as employment opportunities among this population.

The data utilized in the project was drawn from three sources: a questionnaire administered in Connecticut in conjunction with a five state National Cancer Institute study of long-term survivors of childhood cancer, the files of the Connecticut Tumor Registry and a Connecticut psychosocial addendum which was administed immediately following the NCI questionnaire.

The study cohort consisted of those diagnosed in Connecticut at age 19 or younger between 1945 and 1974 with a malignant tumor or any brain tumor and who survived at least five years to reach at least age 21 by 1980. Up to two full siblings were selected as controls, with preference given to those of the same sex and closest in age to the survivors.

The response rate of 84% yielded a sample size of 1037 study subjects consisting of 450 suvivors of childhood cancer and 587 of their siblings. The appropimate matching procedures yielded very similar sex and age frequency distributions.

There was substantial evidence from these data that male survivors experienced significantly more rejection from the armed forces, college and employment than do their siblings. Of those who applied, 80% of male survivors were rejected from the military versus 18% male siblings; for college admissions the percentages were 13% and 3% respectively. The differences with respect to employment were also significant, but not as disparite 32% versus 21%. In contrast to the male differential, equal percentages of females survivors and siblings, 19% were denied employment. Females survivors were also significantly more likely to be denied entrance into the

military. There appeared to be less rejections from graduate school among survivors of both sexes than among ocntrols, although the differential was not significant.

Both male and female survivors were denied life insurance and health insurance more frequently than their siblings. Of those who applied, 24% of male survivors and 19% of females survivors were denied life insurance, 14% male and 9% of females were denied health insurance, in contrast to a negligible number of controls denied insurance of either type.

Our children are indeed damned if they do and damned if they don't. If they have a physical handicap, they can get state vocational help, however, they may have to be a maintenance worker not working towards a teacher's certificate. If they don't have a physical handicap, their "cancer history" will preclude them from all jobs unless their family "knows" people. If the child is cured but has a minor brain dysfunction which doesn't impair his or her understanding and ability but results in needing a longer time to finish tests or do a job—it would probably take a lawsuit to force the state to agree to alternative testing procedures or work procedures for that person.

One mother relayed the sentiments of cured cancer kids very well.

"Mom, why did the good Lord save me—if nobody wants me?"

All hearts should go out to those children. They went though pain, disfiguring surgery, bone marrows, spinal taps, nauseating chemotherapy, hair loss, bone pain, feeling so very sick. The fought hard to reach the point of cure—wellness—only to feel that they aren't worth anything, they aren't competent, they aren't valuable—why were they saved.

Is there hope? Congress is addressing the problem. Congressman Biaggi has introduced Bill #H.R. 5849, called the Cancer Patient's Employment Rights Act. In the preamble to that Bill, Congressman Biaggi cites that approximately 25% of all individuals with a cancer history are victims of cancer related employment discrimination, including job denial, wage reduction, exclusion from and reduction in benefits, dismissal and promotional denial.

The purpose of his Act is to discourage employment discrimination against an individual based on cancer history; to encourage employers to make reasonable accommodations which assist the employment of an individual with cancer history; to increase public recognition of the employability of individuals having a cancer history; and to encourage further legislation designed to prohibit discrimination against individuals with cancer history in areas other than employment discrimination.

The most important part of the Act from the point of view of our children is the following: It shall be unlawful employment practice for an employer, employment agency, or labor organization to require as a condition of employment and employee or perspective employee with a cancer history to meet medical standards which are unrelated to job requirements, or to require such employee or perspective employee to submit to a physical exam or reveal any medical information unless such examination or information is necessary to reveal qualifications essential to job performance.

I certainly hope that all of you will pay close attention to the history of that bill and do what you can to acquaint the Congress with the competence and ability of the children you have cured of cancer. The Biaggi bill, should it become law, will permit our children to be full citizens, participating in our democracy, able to feel that they can go out on the base of their special strengths, their very special maturity and their very special talents to become complete and productive citizens with their own families, their own children and their own opportunities. There is so much richness of spirit that our children have attained through their fight for wellness. This richness of spirit provides benefits and gifts to the rest of the population in terms of understanding problems that people encounter every day in their lives. This spirit and special perception should not be lost due to an inability to find work or fair working and education conditions.

What specifically do our cured kids need to fight the unfair and unsupported burden to them that their cancer history has created? They could use very special help from yourselves.

First, what they need is statistics to give them the ability to go to employers, to go to the insurance companies and present them with statistical evidence that at a certain point in time our children should be considered a normal risk in terms of employment and insurance characteristics. Can you help us compile this data? Search your files for statistics on each major subgroup of cancer in our children to show how treatment has changed and how the longevity of our children has improved. We need to provide a base line against which the insurance companies and employers can measure the wellness and risks posed by our children and break down the barriers to employability and insurability.

Second, we need guardian angels of a special kind. Even armed with the best statistics, the weight and voice of one cured child seeking first time employment is not likely to prevail against the barriers. You can help. How? Each major cancer center should have an office, program or position of ombudsman or advocate on issues of discrimination in employment and education. These persons would accompany the cured patient to make the point of cure emphatically to the putative employer or educational institution—private, government or state.

What this presence and involvement will say to the potential discriminators is that we are not just giving lip service to discrimination, we are putting our power, resources and reputation out front to do battle for our qualified, competent, cured cancer children's rights.

Perhaps for some adult cancer patients, a brochure on their rights and statistical proof that they are no more of a risk than a normal "well" person may be enough to break down barriers. After all, the adult usually has a work history and could seek and muster the support of a union, benevolent or civic organization, employee support group to their assistance.

Our cured children have no such resources to muster. They need you standing shoulder to shoulder with them to make their rights a reality. Such assistance, we hope, will enable them to achieve their goals without costly, lengthy legal proceedings.

I know it is not an easy job. I hope that you can start the ball rolling and get your peers in other institutions in other parts of the country on board.

Through the efforts of institutions such as MSK our cured children can look forward to 65 years, at least, of additional life per child for your efforts. We are your very greatest boosters. Let us work to assure that the children that you have saved and salvaged are not thrown upon the waste heap by an unenlightened bureaucracy.

Mr. Chairman, Members of the Committee, on behalf of parents of children with cancer throughout the world, I should like to commend you for your efforts and for your understanding of our problems.

We gratefully acknowledge the opportunity to submit this statement.

PREPARED STATEMENT OF CANCER CARE, INC.

I am Doris B. Nash, Public Affairs Director at Cancer Care, Inc., a social agency assisting cancer patients and their families. Our main office is in New York City, but we also have satellite offices in Long Island and New Jersey.

The direct services Cancer Care provides are counseling, both individual and group, help in planning for the patients care at home, as well as financial assistance, when necessary and appropriate, to help families pay for care-at-home plans.

In addition, our Public Affairs Committee maintains a vigorous public affairs program responsive to legislative and policy issues relevant to cancer patients and the catastrophically ill, in general. This legislative memorandum is the format we use to state our opinions on home health care, insurance, and many other issues.

We were recently very active in New York State in pushing for a solution to the problems people have in securing health insurance coverage when they have a pre-existing condition. Legislative hearings were held on this issue in New York State, and it now appears that Blue Cross/Blue Shield of Greater New York will be expanding its coverage to include major medical policies during open enrollment periods.

We would like now to announce that the Public Affairs Committee has added to its list of goals and objectives the issue of discriminatory employment practices experienced by many cancer patients. We plan to study our own patients and give prominence to this issue. We are pleased that Congressman Biaggi has introduced the Cancer Patients Employment Rights Act of 1985, and we look forward to working with him and other organizations toward the achievement of equality and fairness in the hiring of cancer patients.

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THE NATIONAL CANCER FOUNDATION, INC.
BALANCE SHEET – JUNE 30, 1965

ASSETS

	Current funds		Total all funds
	Unrestricted	Restricted	
	$1,170,966	$140,680	$1,311,646
[illegible]	2,000,000		2,000,000
	499,517		499,517
	70,750		70,750
	50,000		50,000
	91,025		91,025
	$3,781,051	$140,680	$3,944,971

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TIES AND FUND BALANCES

	$ 971,610		$ 971,610
	17,100		17,100
	500,811		500,811
	2,496,000	$140,680	2,636,680
	$3,781,051	$140,680	$3,944,971

[illegible]